

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

Coram

The Hon'ble Mr. Justice **M.DURAISWAMY**

C.R.P.(NPD).No.2657 of 2015
and
M.P.No.1 of 2015

1.Mrs.Roshan Fathima
2.Khaja Bhai
3.Rasheed

.. Petitioners

Vs.

Mrs.Shyamala Devi

... Respondent

Civil revision petition filed against the fair and decretal order dated 21.04.2015 passed by the I Assistant City Civil Judge, Chennai, in I.A.No.16888 of 2014 in O.S.No.1244 of 2013.

For Petitioners .. Mr.A.E.Challaiah,Sr.counsel for
Mr.C.Saifullah

For Respondent .. Mr.R.G.Annamalai

ORDER

Challenging the order passed in I.A.No.16888 of 2014 in O.S.No.1244 of 2013, on the file of the I Assistant Judge, City Civil Court, Chennai, the defendants have filed the above civil revision petition.

2. The respondent herein/plaintiff filed the suit in O.S.No.1244 of 2013 for recovery of money. Since the defendants being absent on 11.09.2014, the trial Court set them ex-parte and passed an ex-parte order on 11.09.2014. Thereafter, the defendants filed an application in I.A.No.16888 of 2014 to set aside the ex-parte order. The application has been filed under Order 9 Rule 7 CPC to set aside the ex-parte order.

3. In the affidavit filed in support of the petition, the defendants have satisfactorily explained the reasons for their non appearance on 11.09.2014. The petition filed by the defendants was contested by the plaintiff. However, in paragraph No.6 of the counter, the respondent/plaintiff has stated that the application may be allowed with heavy cost that may be paid to her.

4. The trial Court dismissed the application finding that the defendants have not given sufficient reason for their non-appearance. As already stated, the trial Court has only passed an ex-parte order, setting the defendants as ex-parte. The application has been filed under Order 9 Rule 7 CPC to set aside the ex-parte order. The

defendants have also satisfactorily explained the reasons for their non-appearance on 11.09.2014. In such circumstances, the trial Court ought to have allowed the application.

5. In these circumstances, I am of the considered view that in the interest of justice and in order to give one more opportunity to the defendants, the ex-parte order passed in the suit on 11.09.2014 should be set aside. Accordingly, the fair and decretal order passed in I.A.No.16888 of 2014 in O.S.No.1244 of 2013 are set aside. The application in I.A.No.16888 of 2014 stands allowed. The ex-parte order passed against the defendants on 11.09.2014 is set aside. The civil revision petition is allowed on condition that the petitioners/defendants paying a sum of Rs.3000/- (Rupees three thousand only) to the plaintiff as cost within a period of one week from the date of receipt of a copy of this order.

6. Since the suit is of the year 2013, I direct the I Assistant Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No.1244 of 2013 on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

M.DURAISWAMY,J.

msk

7. The civil revision petition is allowed. No costs.
Connected miscellaneous petition is closed.

21.07.2015

msk

To

The I Assistant City Civil Judge,
Chennai.

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