

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1449 of 2010

1. Kuppammal
W/o Kuppu Chettiar
 2. Venkatesan
S/o Kuppu Chettiar
- ... Appellants/Petitioners

-Vs-

Krishnamoorthy
S/o Seetharama Iyer

... Respondent/Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Order XLIII Rule 1(d) of the Code of Civil Procedure, against the fair and decretal order dated 16.4.2010 made in I.A.No.428 of 2009 in O.S.No.20 of 2005 on the file of the learned Principal District Judge, Villupuram.

For Appellants :: Mr.N.Suresh

For Respondent :: Mr.S.Thiruvengadam

JUDGMENT

This civil miscellaneous appeal has been directed against the impugned decretal order passed in I.A.No.428 of 2009 in O.S.No.20 of 2005 dated 16.4.2010 by the learned Principal District Judge, Villupuram holding against the appellants/defendants 1 & 2, on the ground that when the matter was frequently adjourned at the request of the appellants on 22.10.2008, 4.11.2008, 17.11.2008 and 25.11.2008 for enquiry, the appellants/defendants failed to appear and that the appellants/defendants had failed to produce the relevant documents to show that the second appellant/second defendant Mr.K.Venkatesan was taking treatment for renal problem on the relevant date.

2. Mr.N.Suresh, learned counsel for the appellants submitted when the respondent/plaintiff filed the suit for specific performance, the appellants/defendants had also filed a detailed

written statement opposing the claim. In the meanwhile, during the pendency of the suit, the second appellant Mr.K.Venkatesan was taking treatment for renal failure from Coimbatore Kidney Centre. In support of his submissions, he has also produced various medical certificates including the discharge summary issued by the Coimbatore Kidney Centre on various dates from 4.7.2007 till 5.3.2009. Learned counsel for the appellants, drawing the attention of this Court to the medical documents issued by the Coimbatore Kidney Centre by Dr.K.S.Ramalingam in favour of the second appellant for taking treatment for his renal failure on 12.11.2008, 19.11.2008, 21.11.2008, 24.11.2008, 26.11.2008, 28.11.2008, submitted that these documents could not be filed before the trial Court for setting aside the ex parte decree. However, with the permission of this Court, all these documents have been filed. A perusal of these documents issued by Dr.K.S.Ramalingam, Nephrologist of Coimbatore Kidney Centre in which the second appellant-Mr.K.Venkatesan was taking treatment, clearly shows that he was continuously taking treatment, therefore, he was unable to appear on 25.11.2008. Hence, the order of the trial Court setting him ex parte and refusing to recall the said order is unfair and unjustified, he pleaded. When the second appellant, having suffered renal problem, has been taking treatment, which is evident from various documents, the trial Court should have given one more opportunity. As it has not done so, the impugned order is liable to be set aside.

3. Per contra, Mr.S.Thiruvengadam, learned counsel for the respondent/plaintiff submitted that from the date of filing of the suit, after filing of the written statement, on one pretext or other, the appellants have not even come forward to complete the trial, therefore, the trial Court, after giving number of opportunities on 22.10.2008, 4.11.2008, 17.11.2008 & 25.11.2008, was unable to find any good reason, hence, proceeded ex parte on 25.11.2008. On the date when the matter was proceeded ex parte, although the second appellant Mr.K.Venkatesan was taking treatment, the first appellant could have appeared and cooperated with the trial Court for completing the trial so far as the first appellant is concerned. But in the present case, even the first appellant mother failed to appear, therefore, this is nothing but a plan to procrastinate the trial, hence, the trial Court has rightly refused to recall the order setting the defendants ex parte on 25.11.2008.

4. But this Court is able to see sufficient reasons to accept the case of the appellants/defendants for their non-appearance on 25.11.2008. No doubt the documents which are made available in the typedset were not produced before the trial Court, therefore, this Court could see that the trial Court was also right in passing the impugned order. However, as contended by the learned counsel for the respondent/plaintiff, although no

reasons whatsoever are shown for the non-appearance of the first appellant, however, as the first appellant was also taking care of the second appellant, both of them were unable to appear before the trial Court. Hence, this Court is inclined to interfere with the impugned order subject to payment of Rs.5,000/- to the respondent/plaintiff by the appellants/defendants within a period of two weeks from the date of receipt of a copy of this order. On such payment the ex parte order stands set aside. However, considering the fact that the matter is pending from 2005, this Court directs the trial Court to dispose of the suit on merits and in accordance with law within a period of four months from the date of payment by the appellants. With these observations, the civil miscellaneous appeal stands allowed. Consequently, M.P.Nos.1 & 2 of 2010 are closed. No costs.

ss

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Principal District Judge
Villupuram

vd(co)
prk28/12

C.M.A.No.1449 of 2010

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