

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).Nos.3716 and 3717 of 2015
and M.P.Nos.1, 1, 2 and 2 of 2015

M.G.Geetha

.. Petitioner
in both C.R.Ps

Vs

S.Sakthi Balachander

.. Respondent
in both C.R.Ps

Prayer in C.R.P.(PD)No.3716 of 2015 :Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 made in I.A.No.1076 of 2015 in I.A.No.16196 of 2011 in O.S.No.13811 of 2010 on the file of the V Additional City Civil Court, Chennai.

Prayer in C.R.P.(PD)No.3717 of 2015 :Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 made in I.A.No.1077 of 2015 in I.A.No.16194 of 2011 in O.S.No.13811 of 2010 on the file of the V Additional City Civil Court, Chennai.

For Petitioner
in both C.R.Ps : Mr.V.Kuberan
for M/s.Rank Associates
For Respondent
in both C.R.Ps : Mr.K.Ashok Kumar

COMMON ORDER

Challenging the impugned order passed in I.A.Nos.1076 and 1077 of 2015 for condonation of delay of 699 days in filing application to restore I.A.Nos.16194 and 16196 of 2011 and for reopen and recall P.W.1 which stand dismissed.

2.The respondent as a plaintiff filed a suit in O.S.No.13811 of 2010 for recovery of money. Even though the defendant/petitioner herein was served with notice, she has not filed her written statement in time. Thereafter, the matter was posted for trial, P.W.1 was examined and when the matter was posted for cross examination, he was not cross examined. After the plaintiff's side evidence was completed, time has been given for letting evidence on the side of the defendant. Since the defendant has not let in any evidence, the Trial Court has closed the evidence and posted the matter for argument. At this juncture, the defendant filed I.A.Nos.16194 and 16196 of 2011 to reopen the case and recall P.W.1. Since the plaintiff/respondent has no objection for

allowing the applications, the said applications were allowed on condition to pay cost of Rs.500/- to the plaintiff/respondent herein on or before 23.01.2012 and posted the matter for compliance on 24.01.2012. When the matter was called on 24.01.2012, the conditional order has not been complied with and hence the applications were dismissed. Instead of filing application seeking extension of time for complying with the conditional order or to restore I.A.Nos.16194 and 16196 of 2011, the petitioner/defendant filed I.A.Nos.11741 and 11742 of 2013 for the same relief, which were dismissed on 10.10.2014. Then on 10.11.2014, the petitioner/defendant filed I.A.S.R.Nos.55213 and 55214 of 2014 for the same relief, which were not taken on file. Hence she filed applications in I.A.Nos.1076 and 1077 of 2015 for condonation of delay in filing the petition to set aside the order in I.A.Nos.16194 and 16196 of 2011. The Trial Court after hearing both sides, dismissed the applications. Against which, the present Civil Revision Petitions have been filed.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4.The learned counsel for the petitioner submitted that instead of filing application for extension of time for complying with the conditional order or to

restore I.A.Nos.16194 and 16196 of 2011, the learned counsel appeared on behalf of the petitioner/defendant before the Trial Court has committed a mistake in filing the application twice for the same relief. He further submitted that because of the mistake committed by the counsel, the party shall not be penalised. Hence, he prayed for setting aside the orders passed by the Trial Court.

5.Resisting the same, the learned counsel for the respondent submitted that it is admitted fact that for non-compliance of the conditional order, the applications were dismissed on 24.01.2012. Thereafter applications in I.A.Nos.11741 and 11742 of 2013 has been filed only on 29.08.2013 after long time which was dismissed for default on 10.10.2014. He further submitted that the petitioner/defendant filed applications for condonation of delay in restoring the applications I.A.Nos.16194 and 16196 of 2011 only on 21.01.2015 which shows the malafide intention to drag on the proceedings. Hence, he prayed for dismissal of the revision petitions.

6.Considered the rival submissions made by both sides and perused the typed set of papers.

7.The point to be decided is whether there is sufficient cause for allowing the applications? On perusal of the dates and events given by the parties, it shows that as soon as the chief examination of P.W.1 was completed, the case was posted for cross examination and since no cross examination has been done, the plaintiff's side evidence has been closed. Thereafter, time has been given for letting evidence on the side of the defendant and since, no evidence has been let in, the defendant's side evidence was closed and the matter was posted for arguments. At that point of time, the defendant/petitioner filed applications for reopen and recall P.W.1. Though the plaintiff/respondent has no objection, the Trial Court allowed the applications on condition to pay a cost of Rs.500/- to the respondent/plaintiff on or before 23.01.2012 and for compliance, the matter was posted on 24.01.2012. Since the conditional order has not been complied with, the applications were dismissed on 24.01.2012. But the defendant/petitioner herein kept quiet for a long time and then she filed an application in I.A.No.16195 of 2011 to implead some of the third parties as defendants, which was dismissed. Thereafter, she filed applications in I.A.Nos.11741 and 11742 of 2013 on 29.08.2013 to reopen and recall P.W.1, which shows her malafide intention to drag on the proceedings. Even though

the said applications were dismissed, she has not cared to restore the same.

8.It is pertinent to note that after dismissal of I.A.No.16195 of 2011 on 17.04.2013, she kept quiet for a long and then only filed I.A.Nos.11741 and 11742 of 2013. After hearing both sides, the Trial Court has dismissed the said applications on 10.10.2014. Even though the said applications were dismissed as resjudicata, without filing the present applications, immediately she filed applications in I.A.S.R.Nos.55213 and 55214 of 2014 for the same relief for reopen and recall P.W.1, which were not taken on file. Thereafter, she filed the present applications in I.A.Nos.1076 and 1077 of 2015 on 21.01.2015, which shows the malafide intention of the petitioner to drag on the proceedings and to defraud her creditors. In such circumstances, I do not find any reason to interfere with the finding of the Trial Court. Hence, the Civil Revision Petitions deserve to be dismissed.

9.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.At this juncture, the learned counsel for the respondent sought for early disposal of the suit in O.S.No.13811 of 2010. Considering the submission

made by the learned counsel for the respondent, the Trial Court is directed to dispose of the suit in O.S.No.13811 of 2010 within one month from the date of receipt of a copy of this order.

07.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The V Additional City Civil Court, Chennai.

R.MALA. J.,

cse

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