

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2015

CORAM;

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN

C.R.P.(NPD). No.375 of 2015
and M.P.Nos.1 and 2 of 2015

1. Rajagopal
2. Thulasi Naicker

..Petitioners

Vs

Gayathri

..Respondent

Civil Revision Petition is filed against the order dated 8 December 2014 made in CMA No.4/2013 (against I.A.No.1050/2012 in O.S.No.32 of 2002 on the file of Learned DMC, Chengalpattu) by the learned Additional Subordinate Judge, Chengalpattu.

For Petitioners : Dr. C. Ravichandran

For Respondents : Mr.V.K. Sathiamurthy
for Mr.C. Rajan

ORDER

The suit filed by the respondent in O.S.No.32 of 2002 was dismissed for default. The application filed by the respondent in I.A.No.1050 of 2012 to restore the suit was also dismissed by the Trial Court. The respondent

challenged the said order before the First Appellate Court in C.M.A.No.4 of 2013. The Civil Miscellaneous Appeal was allowed subject to payment of costs. Feeling aggrieved by the order dated 8 December 2014 in C.M.A.No.4 of 2013, the petitioner has come up with this Civil Revision Petition.

2. The learned counsel for the petitioners contended that the respondent has given a false reason in her affidavit filed in support of the application in I.A.No.1050 of 2012. According to the learned counsel, the respondent is not entitled to a discretionary relief and as such her application was rightly dismissed by the trial court. The learned counsel further contended that notwithstanding the fact that the respondent filed a false affidavit, the learned Subordinate Judge allowed the appeal and condoned the delay.

3. The learned counsel for the respondent supported the impugned order.

4. The respondent filed a suit in O.S.No.32 of 2002 against the petitioners. The suit was dismissed for default. The respondent within four days from the date of dismissal filed an application to restore the suit. It is

true that an incorrect statement was made by the respondent in the application filed to restore the suit. The learned Additional Subordinate Judge considered the incorrect statement and even then opined that the respondent should be given an opportunity to contest the suit on merits. The First Appellate Court rightly exercised its discretion in favour of the respondent and restored the suit. The fact that there were certain incorrect statements in the affidavit filed in support of the application in I.A.No.1050 of 2012 alone cannot be a reason to dismiss the application to restore the suit. I am therefore of the view that the learned Appellate Judge was correct in allowing the appeal.

5. In the upshot, I dismiss the Civil Revision Petition. Consequently the connected MP is closed. No costs.

21.08.2015

Index:Yes/No
Internet:Yes/No

Tr/

To
The learned Additional Subordinate Judge,
Chengalpattu.

K.K.SASIDHARAN, J

Tr

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