

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(PD) No.4676 of 2013
& M.P.No.1 of 2013

Mrs.J.Jessey (deceased)

1.J.Sivakumar

2.J.Sarathy

3.J.Ramyakumari

: Petitioners/Plaintiffs

Vs

Mrs.Girija

: Respondent/Defendant

Prayer : Civil Revision Petition filed under section 227 of the Constitution of India, against the fair and decreetal order passed by the learned III Additional Family Court, Chennai, dated 08.02.2013 in I.A.No.2860 of 2011 in O.S.No.120 of 2011.

For Petitioners : Mr.N.Seshadri

For Respondent : Mr.N.A.Nissar Ahmed

ORDER

This civil revision is directed against the order passed by the III Additional Family Court, Chennai, in I.A.No.2860 of 2011 in O.S.No.120 of 2011, dated 08.02.2013.

2. Brief facts necessary for the disposal of this revision are as follows:-

The petitioners have instituted a suit in O.S.No.120 of 2011 before Family Court, Chennai against the respondent and the Southern Railways for declaration that the first plaintiff is the legally wedded wife of the deceased P.Janarthanan and the petitioners 2 to 4 are his children and they are the legal-heirs of the deceased P.Janarthanan and for permanent injunction restraining the Southern Railways to offer compassionate job opportunity to the first defendant or her children.

3.According to the first plaintiff, she is the legally wedded wife of P.Janarthanan, which was denied and disputed by the first defendant categorically asserting that she is the wife of the deceased P.Janarthanan, who died on 24.05.2011.

4.The first defendant in the suit was set ex-parte and an ex-parte order was passed against her on 26.08.2011 and subsequently, the first defendant/respondent filed I.A.No.2860 of 2011 on 14.09.2011 to set aside the ex-parte order stating that she was suffering from very high temperature and therefore, she was not able to appear before the court.

5.The application was resisted by the plaintiffs stating that the absence of the first defendant was willful and mala fide and she has not shown sufficient cause to set aside the ex-parte order. It is further stated that the first defendant has not produced any medical certificate in support of her case.

6.The learned Judge, Family Court, Chennai has set aside the ex-parte order on payment of costs of Rs.500/- to be payable on or before 26.02.2013 and posted the case for hearing on 28.02.2013. The petitioners/plaintiffs filed a memo on 28.02.2013 stating that the first defendant has not complied with the condition and she has not paid the cost of Rs.500/- in time.

7.The respondent/first defendant filed a petition seeking extension of time contending that the plaintiffs refused to receive the cost and thereafter, filed a memo on 21.03.2013 stating that time was extended and the first defendant deposited the costs.

8.Mr.N.Seshadri, learned counsel for the petitioners submitted that the first defendant has not produced any documentary evidence in support of her contention that she was suffering from high fever; that the first defendant had also not paid the costs in time as per the order

of this court and that the court cannot set aside the ex-parte order on mere vague and baled allegations. The learned counsel further submitted that the first defendant could not produce any medical certificate to substantiate her case and the allegation that the petitioners refused to receive the costs is not factually correct and the first defendant has not tendered the costs in time.

9.Per contra, Mr.N.A.Nissar Ahmed, learned counsel for the respondent contended that the suit was filed for declaring the status of the parties and therefore, the defendants should be given ample opportunity to advance her case. The learned counsel further submitted that the trial court, considering the nature of the suit and having satisfied with the reasons assigned in the affidavit, set aside the ex-parte order. It is further submitted that the plaintiffs had adopted dilatory tactics in receiving the costs, which necessitated the first defendant to file an application to deposit the costs into the court, which was also allowed and complied with by the first defendant. The learned counsel further submitted that there is no delay in filing the application to set aside the ex-parte order and only in cases of inordinate delay, the first defendant has to produce medical certificate in support of her case.

10.It is not in dispute that the plaintiffs have instituted the suit for declaration and for permanent injunction. The suit was filed on 13.06.2011 and the first defendant was set ex-parte on 26.08.2011. The first defendant filed an application to set aside the ex-parte order in time i.e., on 04.09.2011. The trial court, having felt that the first defendant should be given opportunity to contest the case, set aside the ex-party order of payment of cost.

11.It is also not in dispute that on the application filed by the first defendant, the trial court had extended the time and the first defendant has also paid the cost subsequently.

12.In the above facts, I do not find any reason to overturn in the order impugned in this revision. In the result, the revision is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

09.06.2015

Index : Yes/No
Internet: Yes/No

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K.KALYANASUNDARAM,J

To,
The III Additional Family Court,
Chennai.

C.R.P(PD) No.4676 of 2013

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