



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.P (MD) No.2136 of 2015

and

M.P (MD) No.1 of 2015

1.K.Selvam

2.K.Karuppayee

3.A.Petchiammal

4.A.Thangamariammal

5.K.Thangamarimuthu

6.K.Manikandan

..Petitioners/Petitioners/Defendants

-vs-

M/s.Vishnupriya Forms Private Limited,

Chennai,

Through its Manager,

R.Venkatesan.

..Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the petition and order dated 24.06.2015 passed in I.A.No.216 of 2015 in O.S.No.3 of 2014 on the file of the learned District Munsif, Sattur, Virudhunagar District.

For Petitioners

: Mr.M.Kannan

ORDER

As only a short point is involved, we shall dispose of the Civil Revision Petition today at the admission stage itself.

2. The question crop up before the trial Court is whether in default of payment of costs on the appointed day, the Court has got the power to extend the time or not?. Whether the Court has become *functus officio*.

3. This issue has been clearly covered in Section 148 of the Code of Civil Procedure, 1908 and that has been elaborately discussed by a Division Bench of this Court in *Gowri Ammal and Murugan and others* [2006 (3) CTC 418].

4. Even after expiry of the time, the Court has got discretion to extend the time, which was already expired.

5. Now, in this case, the defendants/revision petitioners were set exparte. To set aside that, they have filed I.A.No.350 of 2014 in O.S.No.3 of 2014. It was allowed on 24.06.2015 directing them to pay a cost of Rs.500/- to other side on or before 30.06.2015 and the mater was directed to be posted on 03.07.2015 for compliance. As there was a delay of 3 days to comply with the said order, the revision petitioners/defendants filed I.A.No.216 of 2015 to condone the said delay. It was dismissed by the trial Court as under:-

"This petition is infructuous because of the petitioner

has to be filed this petition on or before 30.06.2015. This



Court passed an order the petitioner should pay the cost to the respondent on or before 30.06.2015 now. At this stage this petition is not maintainable. Hence, this petition is dismissed."

6. In view of Section 148 of the Code of Civil Procedure, 1908 and in *Gowri Ammal (supra)*, the impugned order of the learned District Munsif, Sattur is vitiated.

7. In the circumstances, this Civil Revision Petition stands allowed. The order and decretal order passed by the learned District Munsif, Sattur, in I.A.No.216 of 2015 are set aside. The revision petitioners shall pay the cost of Rs.500/- to the plaintiff. In case, it is refused, they shall deposit the same in the trial Court and on production of the proof for payment/deposit on or before 28.10.2015, the learned District Munsif, Sattur shall allow I.A.No.350 of 2014 and set aside the exparte decree and thereafter proceed further in accordance with law. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Virudhunagar District.

2.The District Munsif, Sattur.

Copy to:-

The Registrar (Judicial),

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Kannan, Advocate in SR.60185

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PS

PBK/NGM-SS/SAR-I 13/10/2015 ::2P-5C: (IT)