

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1510 of 2015
and M.P.No.1 of 2015

V.Gopalakrishnan

... Petitioner

Vs.

1.P.G.Sivaraman

2.T.R.Vasudevan

3.T.R.Balakrishnan (rep by Power Agent T.R.Vasudevan) ... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the decree and judgment dated 10.10.2014 passed in C.M.A.No.38 of 2014 on the file of the XIX Additional Judge, City Civil Court, Chennai confirming the order and decree dated 04.02.2014 passed in I.A.No.1712 of 2013 in O.S.No.11429 of 1996 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.K.Sivasubramaniam

For Respondents : Mr.K.Mani

ORDER

Challenging the judgment and decree passed in C.M.A.No.38 of 2014 on the file of the XIX Additional Judge, City Civil Court, Chennai, confirming

the order passed in I.A.No.1712 of 2013 in O.S.No.11429 of 1996 on the file of the VIII Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.11429 of 1996 for recovery of a sum of Rs.1,25,326/- together with interest. The 1st defendant filed the written statement and was contesting the suit. When the suit was taken up for trial, since the 1st defendant failed to appear before the trial Court, the trial Court set him exparte and an exparte decree was passed on 24.10.2007.

3.It is also brought to the notice of this Court that the plaintiff had withdrawn the suit in respect of the defendants 2 & 3 on 03.11.1999, therefore, only the 1st defendant was contesting the suit. Thereafter, on 06.11.2007, the 1st defendant took out an application in I.A.No.1712 of 2013 under Order 9 Rule 13 of the Civil Procedure Code to set aside the exparte decree. In the affidavit filed in support of the petition, the petitioner has stated that he came to know about the trial of the suit only at a belated stage, therefore, he could not appear before the trial Court on 24.10.2006. Hence, an exparte decree was passed on that day. Further, he has stated that the 1st defendant was out of Chennai for two years and residing along

with his daughter at Panruti. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the petition, further stating that the petition filed under Order 9 Rule 13 of the Civil Procedure Code was numbered only on 01.03.2013, after a lapse of 1938 days in getting the application numbered.

4. Before the trial Court, on the side of the 1st defendant, three documents were marked. The trial Court, taking into consideration the case of both parties, dismissed the application. Aggrieved over the same, the 1st defendant preferred an appeal in C.M.A.No.38 of 2014 and the Lower Appellate Court also confirmed the fair and decretal order passed by the trial Court. Aggrieved over the judgment and decree passed in C.M.A.No.38 of 2014, the 1st defendant has filed the above Civil Revision Petition.

5. It is pertinent to note that the trial Court had decreed the suit on 24.10.2007 and an application to set aside the exparte decree under Order 9 Rule 13 of the Civil Procedure Code was filed by the 1st defendant on 06.11.2007 itself. However, the application filed by the 1st defendant was numbered only on 01.03.2013, after a lapse of 1938 days by the Registry of the City Civil Court.

6.The learned counsel for the petitioner submitted that the application filed by the petitioner was not numbered by the trial Court for the reason that the plaintiff had preferred a Civil Revision Petition in C.R.P.No.2408 of 2003 and that an interim stay was granted in the Civil Revision Petition on 09.09.2003 and the learned counsel submitted that in view of the pendency of the Civil Revision Petition, the application was kept pending and the suit was not taken up for hearing till the disposal of the Civil Revision Petition. Further, when the application filed by the 1st defendant was not even returned by the Registry of the City Civil Court for rectifying the defects, the 1st defendant cannot be blamed for not getting the application numbered. The fault is on the Registry of the City Civil Court in not numbering the application immediately. The reason for not numbering the application for a period of more than five years has caused hardship and prejudice to both the parties. It is the duty of the Registry to get the application either numbered or returned immediately and no purpose will be served in keeping the application pending without numbering or returning the papers for compliance for more than five years. When there is no delay in filing the application, the Courts below should have given an opportunity to the 1st defendant to contest the suit on merits.

7.The judgment relied upon by the learned counsel for the respondents reported in **2012 (1) CTC 849 [R.Jagadeesan (died) 2.Sakunthala 3.Magendran 4.Parthipan (cause title accepted vide order of this Court dated 26.11.2009 in M.P.No.1 of 2009) Vs. Santhakumari]** is not applicable to the facts and circumstances of the present case for the reason that in the said Civil Revision Petition an order passed under Section 5 of the Limitation Act was challenged and this Court, in the absence of sufficient cause shown by the petitioner, dismissed the application. In the case on hand, as already stated, the petitioner has filed an application within two weeks from the date of exparte decree and for not getting the application numbered, the petitioner cannot be blamed.

8.In these circumstances, in the interest of justice, the 1st defendant should be given an opportunity to contest the suit on merits. Accordingly, the judgment and decree passed in C.M.A.No.38 of 2014 on the file of the XIX Additional Judge, City Civil Court, Chennai, confirming the order passed in I.A.No.1712 of 2013 in O.S.No.11429 of 1996 on the file of the VIII Assistant Judge, City Civil Court, Chennai are set aside. The application in I.A.No.1712 of 2013 in O.S.No.11429 of 1996 stands allowed. The Civil Revision Petition is allowed.

9. Since the suit in O.S.No.11429 of 1996 is pending from 1996, I direct the VIII Assistant Judge, City Civil Court, Chennai to dispose of the suit and the counter claim, if it is in order, on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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25.01.2016

To

- 1.The XIX Additional Judge,
City Civil Court,
Chennai.
- 2.The VIII Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.

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