

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.836 of 2014
and
M.P.No.1 of 2014

G. Kalavathy

..... Petitioner

vs

Tamilarasi

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and final order passed in I.A.No.1356 of 2013 in I.A.No.1778 of 2012 in O.S.No.293 of 2011 on the file of Principal District Munsif Court, Bhavani.

For Petitioner : Mr.A.S. Thambuswamy

For respondent : Mr.D. Selvaraju

ORDER

Challenging the fair and final order passed in I.A.No.1356 of 2013 in I.A.No.1778 of 2012 in O.S.No.293 of 2011 on the file of Principal District Munsif Court, Bhavani, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.293 of 2011 for permanent injunction. The defendant filed her written statement and was contesting the suit.

3. When the suit was posted for trial on 26.09.2012, since the plaintiff failed to appear before the trial Court, the suit was dismissed for non-prosecution. Thereafter, the plaintiff filed an application in I.A.No.1778 of 2012 to restore the suit. In that application, the trial Court passed an order directing the plaintiff to appear on 26.09.2013 for cross examination. The trial Court also observed that on failure to appear on 26.09.2013 will result in dismissal of the suit. Since the plaintiff failed to appear before the trial Court on 26.09.2013, the suit was again dismissed for default. Thereafter, the petitioner filed an application in I.A.No.1356 of 2013

to set aside the order passed in I.A.No.1778 of 2012 in O.S.No.293 of 2011, which was dismissed on 26.09.2013.

4. In the affidavit, filed in support of the petition, the plaintiff has stated that she was bedridden and was taking treatment, therefore, she could not appear on 26.09.2013 for cross examination.

5. The defendant filed her counter disputing the averments stated in the affidavit, filed in support of the petition.

6. The trial court, taking into consideration the case of both parties, dismissed the application, finding that the plaintiff should have filed an application under Sec.148 of the Civil Procedure Code, instead of filing an application under Order 9 Rule 9 of Civil Procedure Code.

7. It is pertinent to note that the application in I.A.No.1778 of 2012 was filed by the plaintiff under Order 9 Rule 9 of Civil Procedure Code to restore the suit, which was dismissed for default on 26.09.2012. While disposing of the application in I.A.No.1778 of

2012, the trial Court directed the plaintiff to appear for cross examination on 26.09.2013 and also observed that failure to appear for cross examination on 26.09.2013 would result in dismissal of the suit. Since the plaintiff was not in a position to appear before the trial court on 26.09.2013, the application in IA.No.1778 of 2012 was dismissed.

8. When the defendant had already filed her written statement and was contesting the suit and the suit was posted for trial, I am of the considered view that in the interest of justice, the plaintiff can be given an opportunity to prosecute the suit on merits. Therefore, the order passed in I.A.No.1356 of 2013 has to be set aside and consequently, the order passed in I.A.No.1778 of 2012 will also have to be set aside.

9. Accordingly, the orders passed in I.A.No.1356 of 2013 in I.A.No.1778 of 2012 in O.S.No.293 of 2011 dated 29.01.2014 as well as the order passed in I.A.No.1778 of 2012 dated 26.09.2013 are set aside. Both the applications i.e., I.A Nos.1356 of 2013 and 1778 of 2012 are allowed. I direct the Principal District Munsif, Bhavani to

take up the suit and dispose of the suit in O.S.No.293 of 2011 on merits and in accordance with law within three months from the date of receipt of a copy of this order. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected M.P is closed.

07-11-2016

sr

Index:yes/no
website:yes

Note: Issue Order copy on 10.11.2016

To

The Principal District Munsif Court, Bhavani.

M. DURAI SWAMY,J.,

sr

CRP(NPD)No.836 of 2014

07-11-2016

<http://www.judis.nic.in>