

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.1473 of 2013
and
M.P.No.1 of 2013

Mynavathy

.. Petitioner

Vs

Kalaivani

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned order dated 24.09.2012 in I.A.No.584 of 2012 in O.S.No.18 of 2006, on the file of the District Munsif Court, Thiruvottiyur.

For Petitioner : Mr.V.S.Ramadoss

For Respondent : Mr.S.L.Venkatesan

ORDER

The defendant is the civil revision petitioner before this Court. Challenging the order passed in I.A.No.584 of 2012 in O.S.No.18 of 2006, dated 24.09.2012, on the file of the District Munsif Court, Thiruvotriyur.

2. The respondent/plaintiff has filed the suit in O.S.No.18 of 2006, against this petitioner/defendant for declaration declaring the title of the suit schedule of property with further direction to the defendant to deliver vacant possession of the property to the plaintiff.

3. In the said suit, this petitioner/defendant also filed his written statement and thereafter the case was adjourned on various occasions and finally the case was posted on 18.03.2010.

4. The petitioner/defendant further states that She has also engaged an Advocate, who is practicing at High Court of Madras and She is attending the case. Though the case was periodically adjourned and posted in the month of April 2010, this petitioner/defendant has not appeared before the Court, since she was suffering from Jaundice and Malaria Fever and hence, she could not able to contact her counsel and enquired about the stage of the case.

5. After summer vacation, this petitioner/defendant, through her counsel verified the Court records and thereafter she came to know that the matter was posted on 12.04.2010 in the special list and the

respondent/plaintiff also appeared before the Court and examined himself as PW1 and marked the documents and on the same day exparte decree was passed in favour of the respondent/plaintiff.

6. Though, the suit was set exparte on 12.04.2010 on verification and advised by her counsel this petitioner/defendant should have filed the set aside application within 30 days. But, due to the above genuine reason, since in the summer vacation her counsel also not in station, there was a delay of 42 days in filing the application to set aside the exparte decree. Therefore, she has filed two applications in I.A.No.6 of 2012 for condoning the delay in filing the set aside application and another application in I.A.No.584 of 2012 for setting aside the exparte decree dated 12.04.2010.

7. Originally the condone delay application in I.A.No.6 of 2012 was allowed on 06.08.2012 on condition that the petitioner should pay a sum of Rs.1,000/- to the respondent or her counsel. Thereafter, the set aside application was numbered and notice was given to the respondent. Therefore, the petitioner/defendant has prayed the trial Court to set aside the exparte decree dated 12.04.2010.

8. On receipt of the notice in I.A.No.584 of 2012, a counter affidavit has been filed by the respondent/plaintiff, denying the allegations set out in the petition by the petitioner/defendant.

9. The respondent/plaintiff states that after the decree dated 12.04.2010, in the year 2011 the respondent/plaintiff has filed an Execution Petition in E.P.No.38 of 2011 before the District Munsif Court, Thiruvotriyur. On receipt of the notice only, this petitioner/defendant has filed this application for condone the delay as well as the set aside the exparte decree. Hence, the respondent/plaintiff states that the application filed for setting aside the exparte decree in I.A.No.584 of 2012 is not maintainable and she sought for the dismissal of the application.

10. Considering both side cases, the learned District Munsif Court, Thiruvotriyur was pleased to allow the application in I.A.No.584 of 2012 filed under Order 9 Rule 13 of C.P.C. for setting aside the exparte decree in I.A.No.584 of 2012 in O.S.No.18 of 2006, on condition that the petitioner should pay a sum of Rs.300/- on or before 21.09.2012, failing which the application has been dismissed automatically.

11. Though, the order was passed on 11.09.2012 giving time to the petitioner/defendant to pay the said amount of Rs.300/- on or before 21.09.2012, but the petitioner/defendant has not paid the cost and there was no representation before the District Munsif Court, Thiruvotriyur, when the matter was called on 24.09.2012 and hence the learned District Munsif, Thiruvotriyur was pleased to dismiss the application on the ground that the cost was not paid, the petitioner also not present in the Court. Challenging the said order, this Civil Revision Petition has been filed before this Court.

12. Heard Mr.V.S.Ramadoss, learned counsel appearing for the petitioner and Mr.S.L.Venkatesan, learned counsel appearing for the respondent.

13. It is a case of the petitioner/defendant that originally the condone delay application filed in I.A.No.6 of 2012 was allowed, on payment of cost of Rs.300/-, hence she filed the application for setting aside the exparte decree. Since the trial Court has allowed the application on condition to pay a sum of Rs.300/- on or before 21.09.2012, but the said order was not complied, due to the reason

that the petitioner's counsel was not properly informed to the petitioner and the petitioner was also not contact her counsel and enquired about the order.

14. Admittedly, this petitioner/defendant ought to have file an application under Section 148 for extension of time for payment of the cost, but without doing the same, she has approached this Court, challenging the order of dismissal since once the petition has been dismissed for non compliance of the order passed in I.A.No.584 of 2012 dated 24.09.2012, this petitioner should not file any extension petition under Section 148. Therefore, she challenged the order of dismissal dated 24.09.2012 before this Court. Therefore, the petitioner is make out the case before the Court and hence in the interest of justice by giving one more opportunity to the petitioner, it is just and necessary to allow the civil revision petition by setting aside the order passed in I.A.No.584 of 2012 dated 24.09.2012, on condition that the petitioner should pay a cost of Rs.1,000/- to the learned counsel appearing for the respondent instead of the amount ordered as Rs.300/- on 11.09.2012, by the trial Court.

15. Accordingly, I am inclined to pass the following orders:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.584 of 2012, dated 24.09.2012, on the file of the District Munsif Court, Thiruvotriyur, on condition that the petitioner should pay a sum of Rs.1,000/- as costs to the learned counsel appearing for the respondent within a period of two weeks from the date of receipt of a copy of this order.

(b) further, the learned District Munsif Court, Thiruvotriyur is hereby directed to dispose the suit within a period of two months thereafter on day today basis, without giving any adjournment to either parties and both the parties are hereby directed to co-operate for early disposal of the suit.

16. Therefore, the Civil Revision Petition is allowed with the costs. Consequently, connected miscellaneous petition is closed.

05.12.2016

vs

Note: Issue order copy on 07.12.2016.

Index: Yes/No

Internet: Yes/No

M.V.MURALIDARAN.J.,

VS

To

The District Munsif, Thiruvottiyur.

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