

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP(PD).No.2379 of 2016

and

CMP.No.12301 of 2016

M.Murugesan

..Petitioner

vs.

S. Muthu

..Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 25.02.2016 made in I.A.No.1439 of 2015 in I.A.No.1619 of 2014 in O.S.No.867 of 2011 on the file of Principal District Munsif, Salem and prays to set aside the same.

For Petitioner : Mr.P.P.Shanmugasundaram

For Respondent : No Appearance

ORDER

Heard the learned counsel for the petitioner. None appears on behalf of the respondent inspite of printing his name in the cause-list after service.

2. The Trial Court earlier allowed the application filed by the petitioner under Order 9 Rule 7 CPC subject to the condition

that he shall pay a sum of Rs.500/- (Rupees Five Hundred Only) as cost to the respondent on or before 20.01.2015. The petitioner failed to pay the cost and as a result, the application was dismissed. Thereafter, the petitioner filed an application for extension of time for payment of cost. The application was dismissed by the learned Trial Judge on the ground that sufficient reasons were not given for non-payment of cost amount within the time permitted by the court.

3. There is no dispute that the petitioner failed to pay the cost within the time indicated in the order passed by the learned Trial Judge. Subsequent application in I.A.No.1439 of 2015 filed under Section 148 r/w 151 CPC for extension of time was rejected.

4. It is true that the application was not happily worded. The learned Trial Judge was of the view that the petitioner ought to have given detailed particulars with regard to the delay caused.

5. The suit is yet to be posted for trial. The petitioner would be denied of an opportunity to contest the suit incase, the written statement is not received on file, by setting aside the Order under Order 9 Rule 7 CPC. Therefore, on a totality of the entire circumstances, I am of the view that the petitioner should be

permitted to pay the cost which was imposed by the learned Trial Judge.

6. In the result, the order dated 25.02.2016 in I.A.No.1439 of 2015 is set aside subject to the payment of a further sum of Rs.2500/-(Rupees Two Thousand and Five Hundred only) towards cost to the respondent. The cost shall be paid on or before 03.10.2016. The learned Trial Judge is directed to post the suit on 04.10.2016 for confirmation with regard to payment of cost. In case, the petitioner failed to pay the cost amount as indicated above, the petition under Order 9 Rule 7 CPC would stand dismissed.

The Civil Revision Petition is allowed as indicated above. Consequently, connected miscellaneous petition is closed.

20.09.2016

gv/ds

Index : Yes/No

Internet: Yes/No

Note: Issue Order Copy on 26.09.2016

K.K.SASIDHARAN,J.

gv

To

The Principal District Court,

Salem.

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