

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 17.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.2141 of 2013
& M.P.No.1 of 2013

Mariammal

.. Petitioner

Vs.

S.Mohanadevi

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order dated 25.02.2013 returning the un-numbered I.A.No..... of 2013 in I.A.No.1801 of 2012 in O.S.No.603 of 2011 on the file of the First Additional District Court, Tiruppur.

For petitioner : Mr.K.Govi Ganesan

For respondent : Mr.D.Muthuselvam

ORDER

This Civil Revision Petition is filed against the docket order dated 25.02.2013, returning the un-numbered I.A.No. of 2013 in I.A.No.1801 of 2012 in O.S.No.603 of 2011 on the file of the learned First Additional District Court, Tiruppur.

2. Learned counsel for the revision petitioner/first defendant contended that earlier, the respondent/plaintiff filed application in I.A.No.1801 of 2012 in

O.S.No.603 2011 to condone the delay of 86 days in filing the restoration petition. The trial Court, by order dated 24.01.2013, allowed the said application in I.A.No.1801 of 2012 stating that there was no representation, counter not filed and sufficient time given. Learned counsel further contended that without mentioning any reason, because of the counter not having been filed, the said I.A. was allowed. Hence, the revision petitioner/D1 filed application to set aside the above order dated 24.01.2013 and the same was returned stating that there is no ex-parte order passed. Learned counsel for the petitioner further submitted that there is no order passed on merits in I.A.No.1801 of 2012, dated 24.01.2013. He also contended that the impugned docket order passed by the learned District Judge in returning the application is not maintainable and therefore, he prayed that the Civil Revision Petition may be allowed.

3. Learned counsel for the respondent/plaintiff contended that the impugned order does not warrant any interference by this Court and prayed that the Civil Revision Petition may be dismissed.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. The said order dated 24.01.2013 passed in I.A.No.1801 of 2012 in O.S.No.603 of 2011, reads as follows:

"No representation. Counter not filed. Sufficient time given.
Hence, this petition is allowed."

6. On a perusal of the said order dated 24.01.2013, it is seen that it is like an ex-parte order, even though the application was filed by the respondent/plaintiff to condone the delay of 86 days in filing the restoration petition. The lower Court has not stated anything about the reasons mentioned in the affidavit to satisfy for condoning the delay of 86 days in filing the restoration petition. It is a non-speaking order and it cannot be considered to have been passed on merits. Subsequently, the revision petitioner/D1 filed application on 28.01.2013 in S.R.No.583 under Order 9 Rule 13 CPC to set aside the above order dated 24.01.2013 and it was returned on 25.02.2013 by passing the docket order, stating that there is no ex-parte order passed. It is not a valid ground to return the application and the said docket order dated 25.02.2013 is liable to be set aside. Accordingly, the same is set aside.

7. Hence, the Civil Revision Petition is allowed. The Court below is directed to take up the application filed by the revision petitioner/D1 under Order 9 Rule 13 CPC, on file and after giving notice to the other side, dispose of the application, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order and it shall be reported to the Registry of this Court without fail. No costs. The Miscellaneous Petition is closed.

Index: Yes/no

Internet: Yes/no

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Copy to

The First Additional District Judge, Tiruppur.

G.CHOCKALINGAM,J

CS

Order

in

C.R.P.(PD).No.2141 of 2013

05-01-2016