

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(PD) No.2785 of 2016**  
**and CMP No.14223 of 2016**

G.Suresh

...Petitioner

versus

K.Thangavel

...Respondent\_

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment and Decree of the learned Subordinate Judge of Pollachi, dated 13.06.2016 in C.M.A.No.11 of 2015 confirming the fair and decretal orders of the learned District Munsif of Pollachi, dated 19.08.2015 in I.A.No.841 of 2015 in O.S.No.306 of 2015.

For Petitioner : Mr.J.Hariharan

For Respondent : Mr.R.Nandhakumar

**ORDER**

The Civil Revision Petition is directed against the judgment dated 13.06.2016 in C.M.A.No.11 of 2015 whereby and where under, the learned Subordinate Judge, Pollachi, dismissed the Civil Miscellaneous Appeal filed by the petitioner.

2.The respondent filed a suit for injunction against the petitioner. In the said suit, the respondent filed an application in I.A.No.841 of 2015 praying for a temporary injunction. Since, the petitioner failed to appear before the trial Court, temporary injunction was granted as prayed for. As against the same, an appeal was filed before the First Appellate Court. The appeal was dismissed by the First Appellate Court.

3.The learned counsel for the petitioner contended that the trial Court failed to give any reason before granting an order of injunction in favour of the respondent. According to the learned counsel, initially, the petitioner filed an application to set aside the exparte order. The petitioner also filed an appeal before the First Appellate Court against the order granting injunction. The learned First appellate Judge, by making comments on the conduct of the petitioner in filing an appeal without making an application to the trial Court to set aside the exparte order, proceeded to dismiss the appeal, thereby confirming the order passed by the trial Court.

4.The learned counsel for the respondent while justifying the impugned judgment of the First Appellate Court and the order passed by

the trial Court contended that sufficient opportunity was given to the petitioner to oppose the application.

5. The respondent filed a suit for injunction. In the said suit, the respondent filed an application for temporary injunction. The trial Court has to consider the prima facie case, balance of convenience and irreparable injury before granting an order of injunction. Unfortunately, the trial Judge failed to consider the trinity test before granting injunction. The trial Court simply stated that the petitioner herein was called absent and as such, the respondent has made out a case for injunction. There is no question of granting ex parte injunction for the reason that the other side remained absent. The trial Court has to consider the merits of the case and decide as to whether the petitioner in the injunction application has made out a case for injunction on the basis of the materials available on record. Unfortunately, no such course was adopted by the trial Court. The learned First Appellate Judge failed to consider the order passed by the learned trial Judge without supplementing reasons. I am therefore of the view that the matter requires fresh consideration by the trial Court.

6.In the result, the order dated 19.08.2015 in I.A.No.841 of 2015 in O.S.No.306 of 2015 and the corresponding judgment in C.M.A.No.11 of 2015 are set aside.

7.The learned District Munsif, Pollachi is directed to take up the application in I.A.No.841 of 2015 and decide the same on merits as per law and after giving opportunity to the petitioner to file a counter affidavit. Such exercise shall be completed within a period of 45 days from the date of receipt of a copy of this order.

8.The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

**04.10.2016**

jbm

Index:Yes/No

To

The District Munsif,  
Pollachi.

**K.K.SASIDHARAN, J.**

jbm

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