

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

CRP(NPD)No.289 of 2016

Arunagiri

.... Petitioner

v.

1. Vadivel Muthaliyar
2. Chanthirasekaran
3. Vijayakumar

.... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure Code against the fair and decreetal order dated 14.07.2015 passed in I.A.No.627 of 2014 in O.S.No.149 of 2011 by the Principal District Judge, Namakkal.

For Petitioner : Mr.A.S. Baalaji

For 1st Respondent : Mr.K. Kanagendran
For R.2 and R.3 : Mr.S. Mani

Challenging the fair and final order passed in I.A.No.627/2014 in O.S.No.149/2011 on the file of Principal District Court, Namakkal, the plaintiff filed the above Civil Revision petition.

2. The plaintiff filed a suit in O.S.No.149/2011 for Specific Performance. Since the plaintiff failed to appear before the trial Court, the trial Court dismissed the suit for non-prosecution on 15.10.2014. Thereafter, the petitioner filed an application in I.A.No.627/2014 to restore the suit to file.

3. It is pertinent to note that earlier also, the plaintiff remained absent before the trial Court and the suit was dismissed for default on 28.06.2012 and the same was restored to file on 03.07.2013, pursuant to the order passed in I.A.No.17/2013, filed by the plaintiff. This is the second occasion, on which, the plaintiff remained absent and the suit being dismissed for default.

4. Before the trial Court, the learned Principal District Judge, Namakkal had taken into consideration the case of both the parties and dismissed the application, finding that the plaintiff has not produced any document in support of his contention that he was out of station on 15.10.2014. In the affidavit, filed in support of the petition, the plaintiff has stated that on 15.10.2014, he went out of station with regard to his business and therefore, he could not appear before the trial Court on that day and hence the suit was dismissed for non-

prosecution on 15.10.2014.

5. The application to restore the suit to file was filed within thirty days from the date of dismissal of the suit. When the petitioner/plaintiff has explained the reasons for his non-appearance on 15.10.2014, in the interest of justice and in order to give one more opportunity to the plaintiff, the trial court could have restored the suit to file. It is a suit for Specific Performance and the suit is posted for trial.

6. In these circumstances, I am of the view that the fair and decreetal order passed in I.A.No.627/2014 in O.S.No.141/2011 can be set aside and the plaintiff can be given one more opportunity to prosecute the suit on merits. In these circumstances, the fair and decreetal order passed in I.A.No.627/2014 in O.S.No.141/2011 is set aside and the application in I.A.No.627/2014 stands allowed on condition that the petitioner/plaintiff paying a sum of Rs.2,500/- to the defendants within a period of two weeks from today.

7. It is made clear that the petitioner is at liberty to pay the said sum of Rs.2,500/- to the learned counsel appearing for the

M. DURAISWAMY,J.,

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respondents in this Civil Revision Petition before this court within the stipulated time. It is also made clear that the petitioner/plaintiff shall pay the said amount of Rs.2,500/- (Rupees two thousand five hundred only) equally among the counsels appearing for the first respondent and for the respondents 2 and 3.

8. Since the suit is pending from the year 2011, I direct the Principal District Judge, Namakkal to dispose of the suit in O.S.No.149/2011, 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.

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Index:no
website:yes

To
The Principal District Court, Namakkal.

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