

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2015

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD) No.233 of 2013

and

M.P.No.1 of 2013

G.Rajagopal

... Petitioner/1st Defendant

Vs.

1. Subha Shree Finance Corporation,
a Registered Partnership Firm,
Rep. by its Partner,
Ramachandran, S/o. Late Subramaniya Mudaliar
No.18/19, RNR Arcade (1st Floor),
Katpadi Road, Vellore - 632 004. ... 1st Respondent/Plaintiff

2. M.Karthikeyan ...2nd Respondent/2nd Defendant

Prayer: Petition is filed under Article 227 of the Constitution of India, against the docket order dated 12.12.2012 made in I.A.No.230 of 2012 in O.S.No.63 of 2010 on the file of the learned Subordinate Judge, Tirupattur.

For Petitioner : Mr.D.Rajagopal

For Respondents : No Appearance

- - - - -

ORDER

This Civil Revision Petition is filed by the petitioner/first defendant, against the docket order dated 12.12.2012 passed by the learned Subordinate Judge, Tirupattur, in I.A.No.230 of 2012 in O.S.No.63 of 2010.

2. Learned counsel for the petitioner/first defendant contended that the trial Court has passed an order dated 12.12.2012, rejecting the claim of the petitioner for marking the documents by reopening and recalling D.W.1 to let in oral and documentary evidence. The said order is erroneous and not valid, since the trial Court had already passed an order in the same application on 11.10.2012 itself. After passing the order allowing the application on 11.10.2012, the trial Court cannot pass any contradictory order in the same application on 12.12.2012. Hence, the learned counsel submitted that the order of the trial Court may be set aside and the Civil Revision Petition may be allowed.

3. When the matter was taken up for hearing, there was no representation on behalf of the respondents 1 and 2.

4. This Court heard the submissions made by the learned counsel for the petitioner/first defendant and perused the materials available on record.

5. The order passed by the trial Court on 11.10.2012 and 19.10.2012, reads as follows:-

"11.10.2012 Common order passed in I.A.No.230/2012 in O.S.No.63 of 2010.

In the result the I.A.No.224 of 2012 and I.A.No.226 of 2012 and I.A.No.230 of 2012 in O.S.No.63 of 2010 petitions are allowed on payment of cost of Rs.500/- each (total Rs.1500/-) as cost to the respondent on or before 18.10.2012. Call on 19.10.2012 for reporting compliance. The Additional documents along with I.A.No.230 of 2012 is taken on file. Respondent side re-open and D.W.1 recall. On failure to pay the cost the petition stands dismissed.

19.10.2012 memo filed by the first respondent. Cost of Rs.500/- received. Prays to record the same. Cost paid. Petition allowed."

6. On a reading of the above order, it is seen that the trial Court has passed a conditional order on 11.10.2012 and adjourned the matter to 19.10.2012 and since the said conditional order was

complied with by the petitioner, I.A.No.230 of 2012 in O.S.No.63 of 2010 was allowed on 19.10.2012. Thereafter, the Court has become functus officio and no order can be passed on 12.12.2012 after allowing the application. But contrary to law, the trial Court, in the same application, had once again passed an order on 12.12.2012 which reads as follows:-

"Since the document is the Certificate Xerox copies and stamp duty document is inadmissible and cannot be marked by paying stamp duty the Xerox copies cannot be validated. Hence, the request is required for reading."

7. On a perusal of the above order, it is seen that after passing the order in I.A.No.230 of 2012 in O.S.No.63 of 2010, on 19.10.2012 itself, allowing the application, the trial Court, in the same application, had once again passed an order on 12.12.2012, which is erroneous and against law. Further, if at all the documents already received, cannot be marked, the trial Court is always at liberty to mark or reject the same during the course of recording evidence. The trial Court has passed two contradictory orders in the same application. Hence, the docket order dated 12.12.2012 passed by the trial Court is liable to be set aside. Therefore, this Court is inclined to allow the Civil Revision Petition.

8. In the result, this Civil Revision Petition is allowed and the docket order dated 12.12.2012 passed by the trial Court is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

05.01.2016

Index :Yes / No
Internet :Yes / No
Jrl

To

The Subordinate Judge,
Tirupattur.

G.CHOCKALINGAM, J.

JrI

Order in

C.R.P.(PD).No.233 of 2013

05.01.2016