

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3422 of 2016
and CMP No.17398 of 2016

N. Ranganathan

... Petitioner

vs

1.N. Loganathan
2.N. Subramanian @ Subha Subramanian
3.P. Santhosh Kumar
4.M/s B.M. Nanjayyan Trust,
Coimbatore represented by
its Managing Trustee
N.Subramanian @ Subha Subramanian
BMN Illam,
No.29, R.R. Samy Lane,
Uppilipalayam,
Coimbatore – 641 018

5. L. Srichand

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 20.09.2016 passed in I.A.No.62 of 2016 in I.A.No.2 of 2016 in A.S.No.1 of 2016 on the file of II Additional Sub Court, Coimbatore.

For Petitioner : Mrs.Hema Sampath

For respondents: Mr.L. Mouli

ORDER

By consent of both the learned counsel, the Civil Revision Petition is taken up for final disposal.

2. Challenging the order passed in I.A.No.62 of 2016 in I.A.No.2 of 2016 in A.S.No.1 of 2016 on the file of II Additional Sub Court, Coimbatore, the petitioner, who is the plaintiff in the suit in O.S.No.624 of 2002 on the file of III Additional District Munsif Court, Coimbatore, has filed the above Civil Revision Petition.

3. The plaintiff filed the suit in O.S.No.624 of 2002 for declaration and permanent injunction. After contest, the trial Court decreed the suit. Aggrieved over the same, the defendants preferred an appeal in A.S.No.1 of 2016 on the file of Additional Sub Court, Coimbatore. In the said appeal, the defendants filed an application in I.A.No.2 of 2016, seeking for stay of the operation of the judgment and order passed in O.S.No.624 of 2002 till the disposal of the appeal. Since the petitioner/plaintiff failed to appear before the lower appellate Court, the lower appellate Court passed an ex-parte order of stay in I.A.No.2 of 2016. Subsequently, the revision petitioner filed an application in I.A.No.62 of 2016 to set aside the ex-parte order passed in I.A.No.2 of 2016. The said application has been filed by the revision petitioner under Order 41 Rule 21 of Civil Procedure Code. The said application was opposed by the respondents.

4. The lower Appellate Court, taking into consideration the case of both parties, dismissed the application, against which, the plaintiff has filed the above Civil Revision Petition.

5. Though only an appeal under Order 43 Rule 1 (t) of the Civil Procedure Code is maintainable as against the order passed in I.A.No.62 of 2016, filed under Order 41 Rule 21 of Civil Procedure Code, the learned counsel, appearing on either side, submitted that instead of going into merits of the matter, it would be suffice to direct the II Additional Sub Judge, Coimbatore to dispose of the appeal in A.S.No.1 of 2016 within a time frame.

6. Mrs.Hema Sampath, learned Senior Counsel, appearing for the petitioner, submitted that the appeal is posted for final hearing before the II Additional Subordinate Judge, Coimbatore on 18.11.2016.

7. Mr.L. Mouli, learned counsel, appearing for the respondents, also consented to co-operate with the lower Appellate Court for the disposal of the Appeal within a time bound manner.

M. DURAISWAMY,J.,

sr

8. Having regard to the submissions made by the learned counsel on either side, without going into the merits of the matter, I direct the II Additional Sub Judge, Coimbatore to take the appeal in A.S.No.1 of 2016 on 18.11.2016 and dispose of the same within four weeks from 18.11.2016. With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected CMP is closed.

14-11-2016

sr

Index:no
website:yes

Note:Issue Order copy Today

To

1. The II Additional Subordinate Court, Coimbatore
2. The III Additional District Munsif Court, Coimbatore

CRP(NPD)No.3422 of 2016

<http://www.judis.nic.in>