

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2016

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THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.2762 of 2013
and M.P.No.1 of 2013

Raja @ Murugan

... Petitioner

Vs

Pubalan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the docket order dated 29.04.2013 passed in Summary Suit No.492 of 2013, on the file of the VI Assistant City Civil Judge, Chennai.

For Petitioner : Mr.K.Mahalingam
For Respondent : Mr.D.Ashok Kumar

ORDER

Notice before admission was given and the respondent is represented by a counsel. As the Civil Revision Petition involves a short point, this Court is of the view that the Civil Revision Petition can be disposed of at the stage of admission itself.

2. The arguments advanced by Mr.K.Mahalingam, learned counsel for the petitioner and by Mr.D.Ashok Kumar, learned counsel for the respondent are heard.

3. The petitioner herein filed the Original Suit No.492 of 2013 as a Summary Suit under Order XXXVII Rule 2 of C.P.C. On service of notice contemplated under Rule 3[1] of Order XXXVII of C.P.C., the respondent herein/defendant entered appearance on 07.02.2013. Thereafter, the counsel for the respondent herein/defendant attempted to serve notice of appearance on the counsel for the petitioner herein/plaintiff, but it was declined. On the adjourned date, namely, on 29.04.2013 also, the learned counsel for the petitioner herein/plaintiff who was present in the Court below, refused to receive the notice of appearance tendered by the learned counsel for the respondent herein/defendant. It is pertinent to note that till such time, no summons for judgment came to be served on the respondent herein/defendant. In view of the refusal of the learned counsel for the plaintiff to receive the notice of appearance, that too, when tendered in the open Court also, the learned trial Judge chose to pass an order granting leave to the defendant to defend the case and posted the matter for filing written statement, thus, converting the Summary Suit into a regular suit. It is as against the said order, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India.

4. Of course, there are laches on the part of the respondent/defendant to serve notice of appearance immediately after entering appearance. But there is nothing in Rule 3[1] under Order XXXVII of C.P.C. suggesting that the suit can be decreed without serving summons for judgment. Though sub clause [3] of Rule 3 under Order XXXVII of C.P.C. contemplates a notice of appearance to be delivered at or sent by pre-paid letter directed to the address of the counsel for the plaintiff or the

plaintiff, as the case may be, the same cannot be taken as a mandatory provision and it can be interpreted only as directory. What is mandatory is service of notice of appearance. The mode of service of notice of appearance contemplated in sub clause [3] of Rule 3 under Order XXXVII of C.P.C. is not exhaustive and when the notice of appearance is sought to be served directly on the counsel on record for the plaintiff in the open Court, it shall be even a superior mode of service. When service of notice of appearance was sought to be effected in such a superior mode, the plaintiff ought not to have refused to receive it. Having refused to receive such notice when it was tendered, the petitioner herein/plaintiff cannot have any scope of contending that notice of appearance has not been served on the petitioner/plaintiff under sub clause [4] of Rule 3 under Order XXXVII of C.P.C.

5. After service of notice of appearance, the plaintiff is expected to take summons for judgment giving not less than 10 days time. Only on service of such summons for judgment, sub clause [5] of Rule 3 under Order XXXVII of C.P.C. gets attracted, which prescribes 10 days time for filing an application seeking leave to defend. As no summons for judgment was served giving at least 10 days time, the respondent/defendant cannot be found fault with, for not filing an application seeking leave to defend the suit. However, the Court seized of the matter, before ever summons for judgment is served and without an application seeking leave to defend, cannot suo motu grant leave to defend and convert the suit into a regular suit. What the Court below has done is, to take note of the fact of refusal of the counsel for the plaintiff to receive the notice of appearance, when it was tendered and to pass an

order straight away granting leave to the defendants to defend the suit, thereby converting the suit into a regular suit and posting the matter for filing written statement.

6. The said order, as rightly contended by the learned counsel for the petitioner is one which has been passed by exercising jurisdiction conferred on the Court improperly and it can even be said that the said order is one passed without jurisdiction. Such a jurisdictional error in the impugned order of the trial Court can be very well successfully challenged before this Court by invoking its power of superintendence under Article 227 of the Constitution of India. A reading of the order passed by the trial Court struck the conscience of this Court and reveals the lack of knowledge in law and the failure to peruse the concerned provisions and decide the matter in accordance with the provisions of law on the part of the trial Court. The learned trial Judge seems to have passed such an order as a person conducting a cop-panchayat. Such a procedure is highly deprecable and this Court does have no hesitation in holding that that impugned order cannot be sustained and the same is liable to be set aside.

7. Simply because this Court comes to the conclusion that the impugned order of the trial Court granting leave to defend suo motu is liable to be set aside, that does not mean that the plaintiff shall be straight away entitled to a decree without following the procedure contemplated under the relevant provisions. The tender of notice of appearance is held to be a valid service of notice of appearance. Hence, the

plaintiff has to undergo the following procedure contemplated under sub clause [4] of Rule 3 under Order XXXVII of C.P.C. Thereafter, only the question of the defendant filing a leave to defend petition within 10 days will arise only. On such filing of the application to leave to defend, the trial Court shall have jurisdiction to refuse or grant either unconditionally or subject to condition leave to defend the suit. The said procedure shall be scrupulously followed by the Court below.

8. In the result, Civil Revision Petition is allowed and the docket order dated 29.04.2013 made in O.S.No.492 of 2013 on the file of the learned VI Assistant Judge, City Civil Court, Chennai is set aside. The service of notice of appearance is held to be sufficient. The trial Court shall give an opportunity to the plaintiff to serve summons for judgment in accordance with Rule 3[4] of Order XXXVII of C.P.C. and then follow the procedure contemplated in the subsequent sub clauses. No costs. Consequently, connected Miscellaneous Petition is closed.

10.03.2016

Index : Yes
Internet : Yes
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To
The VI Assistant Judge,
City Civil Court, Chennai.

P.R.SHIVAKUMAR, J.
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