

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.657 of 2016
and C.M.P.No.3352 of 2016
C.R.P.(NPD).No.4580 of 2015
and M.P.No.1 of 2015 &
C.M.P.No.2692 of 2016

Palanisamy

... Petitioner in both C.R.Ps

Vs.

Murugesan

... Respondent in both C.R.Ps

C.R.P.(NPD).No.657 of 2016 filed under Section 115 of the Civil Procedure Code against the order dated 26.02.2014 made in I.A.No.896 of 2013 in O.S.No.681 of 2010 on the file of the Principal District Munsif Court, Erode.

C.R.P.(NPD).No.4580 of 2015 filed under Section 115 of the Civil Procedure Code against the order dated 26.02.2014 made in I.A.No.896 of 2013 in O.S.No.681 of 2010 on the file of the Principal District Munsif Court, Erode.

For Petitioner (in both C.R.Ps) : Mr.V.S.Kesavan

For Respondent (in both C.R.Ps) : Mr.P.Valliappan

COMMON ORDER

Challenging the award of Rs.10,000/- as costs for condoning the delay of 376 days in re-presenting the petition filed under Order 9 Rule 13 of the Civil Procedure Code, the defendant has filed the Civil Revision Petition in C.R.P.(NPD).No.657 of 2016. Challenging the order of arrest passed in E.P.No.28 of 2013 in O.S.No.681 of 2010 on the file of the Principal District Munsif Court, Erode, the defendant has filed the Civil Revision Petition in C.R.P.(NPD).No.4580 of 2015.

2.The plaintiff filed the suit in O.S.No.681 of 2010 for recovery of a sum of Rs.81,420/- together with interest at the rate of 12% on the principal amount of Rs.60,000/-.

3.Since the defendant failed to appear before the trial Court, an exparte decree was passed on 10.08.2012. Pursuant to the decree passed in O.S.No.681 of 2010, the plaintiff filed an Execution Petition in E.P.No.28 of 2013 to arrest the defendant. The Executing Court, by order dated 06.10.2015, ordered arrest. As against this order, the defendant has filed the Civil Revision Petition in C.R.P.(NPD).No.4580 of 2015.

4.This Court, while ordering notice to the respondent and granting interim stay on 20.01.2016, directed the defendant to deposit a sum of Rs.25,000/- to the credit of E.P.No.28 of 2013 in O.S.No.681 of 2010.

5.In the suit, the defendant filed an application under Order 9 Rule 13 of the Civil Procedure Code to set aside the exparte decree. The said application was returned by the Registry of the trial Court and the papers were re-presented by the defendant with a delay of 376 days. To condone the delay of 376 days in re-presenting the papers, the defendant filed an application in I.A.No.896 of 2013, which application was allowed by the trial Court, on condition the defendant depositing a sum of Rs.10,000/- to the credit of the suit. Against the award of Rs.10,000/-, the defendant has filed the Civil Revision Petition in C.R.P.(NPD).No.657 of 2016.

6.By order dated 22.06.2016, the defendant was granted two weeks time to deposit a sum of Rs.35,000/- to the credit of O.S.No.681 of 2010 on the file of the Principal District Munsif Court, Erode.

7.Now, it is brought to the notice of this Court that the defendant had paid the said sum of Rs.35,000/-, which includes Rs.10,000/- costs awarded

by the trial Court to condone the delay in re-presenting the application filed under Order 9 Rule 13 of the Civil Procedure Code.

8.Since the defendant had deposited a total sum of Rs.35,000/- to the credit of the suit, nothing survives for adjudication in the Civil Revision Petition in C.R.P.(NPD).No.657 of 2016.

9.Since the defendant had filed the application under Order 9 Rule 13 of the Civil Procedure Code, the order passed in E.P.No.28 of 2013 ordering arrest of the defendant can be set aside for the reason that the defendant had shown *bona fide* in depositing a sum of Rs.35,000/-. Accordingly, the order passed in E.P.No.28 of 2013 dated 06.10.2015 is set aside.

10.The trial Court viz., Principal District Munsif Court, Erode is directed to deposit a sum of Rs.35,000/-, which was deposited by the defendant to the credit of O.S.No.681 of 2010, in a Nationalized Bank initially for a period of one year in re-investment plan.

11.Mr.P.Valliappan, learned counsel appearing for the respondent/ plaintiff has no objection for allowing the application filed by the defendant under Order 9 Rule 13 of the Civil Procedure Code. Since the application has

not yet been numbered by the trial Court, I direct the Principal District Munsif Court, Erode to number the application filed under Order 9 Rule 13 and allow the same.

12. Since the suit is pending from the year 2010, I direct the Principal District Munsif Court, Erode to dispose of the suit in O.S.No.681 of 2010 within three months from the date of the order passed in Order 9 Rule 13 application and report the same to the Registry of this Court.

13. In the result, the Civil Revision Petition in C.R.P.(NPD).No.4580 of 2015 stands allowed. The Civil Revision Petition in C.R.P.(NPD).No.657 of 2016 is dismissed as infructuous.

14. It is needless to say that in the event of the plaintiff succeeding in the suit, he is at liberty to withdraw the amount deposited in Fixed Deposit. On the other hand, in the event of the defendant succeeding in the suit, he is at liberty to withdraw the amount deposited. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
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15.07.2016

Note: Issue order copy on 19.07.2016.

M.DURAISWAMY,J.
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To

The Principal District Munsif Court,
Erode.

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