

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4270 of 2009

and

M.P.No.1 of 2009

Thangaraj

.... Petitioner

vs

Divathal

.... Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure Code against the condition imposed in fair and decreetal order dated 25.08.2009 made in C.M.A.No.5 of 2009 on the file of Subordinate Judge Dharapuram, reversing the fair and decreetal order dated 15.12.2008 made in I.A.No.1168 of 2008 in O.S.No.382 of 2006.

For Petitioner : Mr.M. Guruprasad

For respondent : Mr.Ashraj Khan

ORDER

Challenging the judgment and decree, passed in C.M.A.No.5 of 2009, on the file of Subordinate Court, Dharapuram, reversing the fair and final order, passed in I.A.No.1168 of 2008 in O.S.No.382 of 2006, on the file of District Munsif Court, Dharapuram, the defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed a suit in O.S.No.382 of 2006, for recovery of a sum of Rs.67,466.67, together with interest. Since the defendant remained absent before the trial Court, an ex-parte order was passed on 13.03.2007. Subsequently, on 30.03.2007, the defendant filed an application in I.A.No.1168 of 2008 to set aside the ex-parte decree stating that she was suffering from Chikungunya.

3. The application, filed by the defendant, was contested by the plaintiff, that the defendant has not properly explained the reasons for her non-appearance on 13.03.2007.

4. The trial court, taking into consideration of the case of both the parties, dismissed the application. Against which, the defendant

preferred an appeal in C.M.A.No.5 of 2009 on the file of Subordinate Court, Dharapuram and the lower Appellate Court set aside the fair and decreetal order, passed by the trial Court and allowed the appeal, on condition that the defendant depositing 50% of the suit claim amount before the trial Court. Aggrieved over the condition, imposed by the Subordinate Court, Dharapuram, the defendant has filed the present Civil Revision Petition.

5. Mr.M. Guruprasad, learned counsel appearing for the petitioner submitted that the condition imposed by the lower appellate court is onerous and therefore, it is liable to be set aside.

6. Mr.Ashraj Khan, learned counsel appearing for the respondent/plaintiff submitted that the order passed by the lower Appellate Court is just and proper.

7. On the perusal of the order, passed by the lower Appellate Court, it is clear that the condition, imposed by the lower Appellate Court, is onerous, directing the defendant to deposit 50% of the suit claim, which cannot be allowed to stand. Since the defendant has got

the right to contest the suit, raising all the defences, the order passed by the lower Appellate Court is liable to be modified. I am of the view that instead of depositing 50% of the suit claim, before the trial Court, the petitioner/defendant can be directed to pay cost to the respondent/plaintiff.

8. In these circumstance, the order passed by the Subordinate Court, Dharapuram in C.M.A.No.5/2009 is modified to the effect that the application in I.A.No.1168 of 2008 in O.S.No.382 of 2006 on the file of District Munsif Court, Dharapuram stands allowed on condition that the petitioner/defendant, paying a sum of Rs.2,000/- (Rupees two thousand only) to the respondent within a period of one week from the date of receipt of a copy of this order.

9. It is made clear that the petitioner is at liberty to pay the sum of Rs.2,000/-(Rupees two thousand only) to the counsel appearing for the respondent before this Court within the stipulated time. With these observations, the Civil Revision Petition is allowed. Consequently, connected M.P is closed.

10. Since the suit is pending from the year 2006, I direct the District Munsif, Dharapuram to dispose of the suit in O.S.No.382 of 2006 on merits and in accordance with law within a period of four months from the date of receipt of copy of this order.

06-06-2016

sr

Index:no
website:yes

To

1. The Subordinate Court, Dharapuram
2. The District Munsif Court, Dharapuram

M. DURAISWAMY,J.,

sr

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