

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM :

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD) No. 4136 of 2010

and

M.P. No. 1 of 2010

N. Saminathan

... Petitioner/ Defendant

.. Vs ..

Mrs. Bhuvaneshwari

... Respondent/ Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to aside the order dated 25.10.2010 passed in I.A. No. 382/ 2010 in O.S. No. 294 of 2006 on the file of the District Munsif Court-cum-Judicial Magistrate, Perundurai, Erode District and allow the Civil Revision Petition and pass further orders.

For Petitioner : Mr. S. Kaithamalai Kumaran

For Respondent : Mr. I.C. Vasudevan

ORDER

The present Civil Revision Petition is filed seeking to aside the order dated 25.10.2010 passed in I.A. No. 382/ 2010 in O.S. No. 294 of 2006 on the file of the District Munsif Court-cum-Judicial Magistrate, Perundurai, Erode District.

2. The suit is based on the Promissory Note, filed by the plaintiff for recovery of the amount. The defendant though filed a written statement, chose to remain ex-parte. However, he filed an Interlocutory Application in I.A. No. 382 of 2010 under Order IX Rule 7 CPC, to set aside the ex-parte decree passed against him on 08.04.2009. The petitioner claims that though he has filed the above Application on 30.04.2009, it was numbered and brought in the list only after one year. In the meanwhile, the plaintiff has also filed a petition in E.P. No. 39/2009. The learned District Munsif-cum-Judicial Magistrate, Perundurai, who tried the Interlocutory Application, allowed the application for setting aside the ex-parte decree order, however, with an onerous condition to deposit 1/4th of the decree amount, within the time specified. The said order is challenged in this Revision by the defendant.

3. While entertaining the Revision, this Court considered that such an order cannot be passed as a condition, after setting aside the orders. This Court while granting stay, had directed the petitioner to deposit a sum of Rs.10,000/-, which has been complied with, by the petitioner, even on 30.11.2010. Thereafter, no steps have been taken by either of the parties, to dispose of the revision petition.

4. Learned counsel for the respondent is present and submitted that considering the delay that has been caused, pending disposal of the suit the onerous condition should continue. However, as stated supra, the direction to the defendant/ petitioner to deposit the amount, without considering the petitioner's plea, is impermissible unless in certain circumstances.

5. Therefore, the order of the learned District Munsif-cum-Judicial Magistrate, Perundurai, dated 25.10.2010 is set aside. The learned District Munsif is directed to complete the trial, by continuing from where it was stopped, on or before, 30.06.2016. The defendant, who has already filed his written statement is directed to appear before the Court, ready with his case, without indulging in

further procrastination of proceedings. The suit may be posted for hearing on 04.04.2016, on which date the parties are directed to be present before the District Munsif Court.

6. With the above direction, the Civil Revision Petition is disposed of. Consequently, the connected M.P is closed. No costs.

22.02.2016

Index: Yes/No.
Internet: Yes/No.

[Issue order copy on 17.03.2016]
avr

To
The District Munsif Court-cum-
Judicial Magistrate,
Perundurai, Erode District

PUSHPA SATHYANARAYANA J.,

avr

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