

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.4290 of 2010

and

M.P.No.1 of 2010

1.M/s.Bhanumathi Soap Works,
rep.by its proprietor,
Mr.Vanniaperumal,
S/o.Muthiah Nadar,
Pakkam Cross Road,
Villupuram.

2.Vanniaperumal

3.M.Dhanushkodi Nadar

... Petitioners

vs.

State Bank of India,
Karikalampakkam Branch,
rep. by its Branch Manager,
Karikalampakkam,
Pondicherry State

... Respondent

Civil Revision Petition filed under Section 115 of C.P.C., against Judgment and Decree dated 14.10.2016 made in C.M.A.No.10 of 2003 on the file of the Principal District Judge, Villupuram, confirming the Order and Decree dated 24.04.2002 in I.A.No.393 of 2002 in O.S.No.74 of 2002 on the file of the II Additional Subordinate Judge, Villupuram.

For Petitioners : Mr.N.Suresh

For Respondent : No appearance

ORDER

This Civil Revision Petition arises against the Order and Decretal Order dated 14.10.2006 passed in C.M.A.No.10 of 2003 on the file of the District Judge, Villupuram, confirming the Order and Decretal Order dated 24.4.2002 made in I.A.No.393 of 2003 in O.S.No.74 of 1998 on the file of the II Additional Subordinate Judge, Villupuram.

2. The respondent Bank filed the aforesaid suit in O.S.No.74 of 1998 before the Subordinate Court, Villupuram, praying for a direction to the defendants/revision petitioners to pay jointly and severally a sum of Rs.54,554/- with interest @ 14% p.a., with quarterly rests and for costs.

3. In the said suit, the revision petitioners/defendants 1 and 2 filed a Written Statement denying the allegations made in the plaint. The suit was taken up for trial. PW.1 was examined. At the stage of cross examination, as the revision petitioners/defendants were not ready for the cross examination, they were set *exparte* and an *exparte* Decree was passed on 24.8.2001.

4. Thereafter, an Interlocutory Application in I.A.No.393 of 2002 under Order IX Rule 13 r/w section 151 of CPC was filed on the file of the II Additional Subordinate Judge, Villupuram, by the revision petitioners to set aside the *exparte* Decree dated 24.8.2001.

5. Upon hearing both the parties and considering the evidence adduced in the case, the trial Court was of the view that the Interlocutory Application could be allowed on payment of costs and accordingly, directed the revision petitioners to pay a sum of Rs.500/- to the respondent herein within a period of 10 days. Since the revision petitioners did not comply with the said order, the said Interlocutory Application was dismissed by order dated 24.4.2002.

6. Aggrieved against this Order, the Civil Revision Petitioners / Defendants filed Civil Miscellaneous Appeal in C.M.A.No.10 of 2003 before the Principal District Judge, Villupuram. After the learned counsel appearing for the parties and perusing the records, by Judgment dated 14.10.2006, the lower Appellate Court dismissed the Civil Miscellaneous Appeal in C.M.A.No.10 of 2003 by observing that though the defendants/revision petitioners were manufacturers of soap, they filed a petition for extension of time for payment of Rs.500/- and that petition was also filed on 15.4.2002, just 3 days after passing of the conditional order, and this would prove the intention of the defendants/revisions petitioners to protract the proceedings and they had successfully dragged the Civil Miscellaneous Appeal itself from 2003 though the matter involved very simple issue. Against this Order, the present Civil Revision Petition has been filed by the defendants/revision petitioners.

7. Mr.N.Suresh, learned counsel appearing for the revision petitioners would submit that the petitioners had filed an Interlocutory Application in I.A.No.393 of 2002 under Order IX Rule 13 CPC within the prescribed time limit of 30 days to set aside the *exparte* decree and the said Application was allowed on condition of payment of Rs.500/- to the respondent/plaintiff within 10 days and due to certain unavoidable circumstances, they could not pay the said sum and they sought extension of time. However, the trial Court, without appreciating the submissions of the revision petitioners, dismissed the said Interlocutory Application. The Civil Miscellaneous Appeal preferred against the order of the Interlocutory Application was also dismissed. According to the learned counsel for the revision petitioners, both Courts below erroneously dismissed the Applications and Appeals, respectively, without appreciating the reasons adduced by the revision petitioners. The defendants/revision petitioners herein should be an opportunity to prove their case before the Trial Court by adducing oral and documentary evidence. Therefore, the Civil Revision Petition has to be allowed.

8. Notice was served on the respondent bank and the name of the bank was also printed in the cause list, but none appeared on behalf of the respondent bank.

9. Heard Mr.N.Suresh, learned counsel appearing for the petitioners and perused the records.

10. The petitioners should be given an opportunity to prove their case by adducing oral and documentary evidence and the case shall be decided on merits, after affording opportunity to the parties concerned. Such recourse will only meet the interest of justice and therefore, the judgment dated 14.10.2006 made in C.M.A.No.10 of 2003 before the Principal District Judge, Villupuram, is liable to be set aside in the interest of justice but by imposing costs.

11. Accordingly, this Court is inclined to pass the following orders:-

(i) The Judgment and Decree dated 14.10.2006 made in C.M.A.No.10 of 2003 on the file of the Principal District Judge, Villupuram, as well as the fair and decretal order dated 24.4.2002 passed in I.A.No.393 of 2002 on the file of the II Additional Subordinate Judge, Villupuram, are set aside on condition that the revision petitioners pay a sum of Rs.5,000/- (Rupees five thousand only) towards costs to the Tamil Nadu Mediation and Conciliation Centre, High Court Campus, Chennai, within a period of four weeks from the date of receipt of a copy of this order, failing which, the orders passed herein stands automatically vacated.

(ii) In event of restoration of the suit, the trial Court is directed to dispose of the suit in O.S.No.74 of 1998 within a period of six months from the date of restoration of suit on merits and in accordance with law.

12. In the result, the Civil Revision Petition is allowed. The connected Miscellaneous Petition is closed. No costs.

15.04.2016

Index : yes / no

Internet :yes / no

asvm

To

1.The Principal District Judge, Villupuram.

2.The II Additional Subordinate Judge, Villupuram.

D.KRISHNAKUMAR, J.

(asvm)

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