

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

C.R.P.No.704 of 2012

and

M.P.No.1 of 2012

C.R.Dharmalingam ...Petitioner/Plaintiff/Petitioner
Vs.

C.D.Gopal Chettiar ... Respondent/3rd Defendant/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and the decreetal order dated 19.12.2011 in I.A.No.689 of 2011 in O.S.No.435 of 2009 on the file of the II Additional District Munsif's Court, Salem.

For Petitioner : Mr.S.Kalyanaraman
For Respondent : No Appearance

O R D E R

This civil revision petition has been filed against the fair and the decreetal order dated 19.12.2011 in I.A.No.689 of 2011 in O.S.No.435 of 2009 on the file of the II Additional District Munsif's Court, Salem.

2.Heard the learned counsel appearing for the petitioner. No representation on behalf of the respondent.

3.As per the affidavit filed by the respondent in the application for setting aside the exparte order dated 02.09.2010 in I.A.No.689 of 2011 in O.S.No.435 of 2009 in paragraph-2, the respondent stated that he is aged about 80 years and suffering from Blood Pressure and Diabetic and was unwell for the past one year. He was unable to approach his counsel and could not get proper reply from his earlier counsel and hence he was set exparte by the order dated 02.09.2010. Now the respondent has engaged a new counsel and he has filed the written statement.

4.The learned counsel appearing for the petitioner, who is the respondent / plaintiff vehemently opposed for allowing the application. The learned Judge allowed the application by

considering the respondent's age and in the interest of justice the said application was allowed. Against which, the present civil revision petition has been filed by the petitioner / plaintiff.

5. Though I am not inclined to interfere with the order of the trial Court. But, however as per the Civil Procedure Code, the written statement has to be filed within a period of 90 days after obtaining appropriate permission from the Court concerned. But, though the suit was filed in the year 2009, but he has not filed the written statement till 2010. Even, his age is 80 years, he could have instructed at the initial stage to the counsel for filing written statement. But without doing so, he has given reason that he is aged about 80 years and suffering from various diseases, which caused the delay in filing the written statement by the respondent/3rd defendant. While dismissing the Civil Revision Petition, this Court feels that the delay caused to the petitioner should be compensated by way of costs and the same is quantified a sum of Rs.1,000/- to be paid to the petitioner by the respondent/3rd defendant. The same should be paid within a period of two weeks from the date of receipt of a copy of this order.

6. Therefore, I am inclined to pass the following orders:

(a) the civil revision petition is disposed of, but in the interest of justice, it is just and necessary to direct the respondent / 3rd defendant to pay the costs of a sum of Rs.1,000/- to the petitioner / plaintiff within a period of two weeks from the date of receipt of a copy of this order.

(b) this Court further directs the trial Court to dispose of the above suit in O.S.No.435 of 2009 within a period of 3 months from the date of receipt of a copy of this order, since the suit is of the year of 2009. Both the parties are directed to cooperate for the early disposal of the suit.

7. Accordingly, the Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

vs

To

The II Additional District Munsif Judge,
Salem.

+1 CC to Mr. S. Kalyanaraman, Advocate SR.47611

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BVR (CO)
MD : 06.09.2016



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