



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2016

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD). No. 92 of 2015

1. Nallammal
2. Kandasamy
3. Subiramani
4. Chandra
5. Alagumani .. Petitioners/Respondents/Plaintiffs 2 to 6

Vs.

Velan @ Velu .. Respondent/Petitioner/1st Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 30.04.2012 passed in I.A.No.51 of 2011, in O.S.No.31 of 2001 on the file of the District Munsif Cum Judicial Magistrate, Keeranur, Pudukkottai.

For Petitioners : Mr.B.Jameel Arasu
For Respondent : Mr.J.Anandkumar

ORDER

The plaintiffs filed the suit in O.S.No.31 of 2001 on the file of learned District Munsif cum Judicial Magistrate, Keeranur, Pudukkottai, for damages against the respondent/defendant. In the afore-said suit, the respondent/second defendant has remained exparte on 26.03.2003. Thereafter, he filed an application in I.A.No.233 of 2004 for condoning the delay in filing the set aside application. The afore-said application was allowed on 17.10.2005 on condition that the petitioner/second defendant should pay a sum of Rs.900/- to the revision petitioners/plaintiffs counsel on or before 26.10.2005.

2. The aforesaid condition was not complied with by the respondent herein. But, he filed an application in I.A.No.51 of 2011 seeking extension of time, that too after a lapse of 6 years. The said application was allowed on condition that the respondent herein/second defendant has to pay costs of Rs.2,500/- to the revision petitioners/plaintiffs counsel on or before 15.06.2012, failing which the application shall stand dismissed. Aggrieved by



that order, the petitioners/plaintiffs herein preferred civil revision petition before this Court.

3. The learned counsel for the revision petitioner submitted that there is an inordinate delay in filing the petition to extend the time. Therefore, allowing the said application by the Trial Court on imposing costs is erroneous and unsustainable in law.

4. On the other hand, the learned counsel for the respondent submitted that the respondent herein has taken all steps to file the application to set aside the exparte order and such application was allowed on payment of costs. However, due to inadvertent mistake, the said amount was not paid in time. Thereafter, interlocutory application I.A.No.51 of 2011 was filed by the respondent herein, who is the second defendant before the Trial Court. Taking into consideration of the reasons stated in that affidavit, the Trial Court allowed the said application on imposing costs of Rs.2,500/- to be paid by the respondent herein to the revision petitioners counsel on or before 15.06.2012. Being not satisfied with the said order, the revision petitioners are before this Court.

5. The afore-said suit has been filed by the revision petitioner for damages for a sum of Rs.30,000/- against the respondent/defendant. An exparte order was passed as against the second defendant by the Trial Court on 26.03.2003. As stated in the earlier paragraph, the second defendant filed the application in I.A.No.233 of 2004 for condoning the delay in filing to set aside application and the same was allowed by the Trial Court on 17.10.2005 by imposing costs at Rs.100/- each to the plaintiffs. The said condition was not complied with. Thereafter, the respondent filed an application in I.A.No.51 of 2011 in the afore-said suit to extend the time to pay the costs. The Trial Court allowed the said application on imposing costs of Rs.2,500/-.

6. Even though the petitioners have filed the present civil revision petition to set aside the order made in I.A.No.51 of 2011, this Court feels it appropriate to enhance the costs at Rs.10,000/- to be paid by the respondent to the revision petitioners, since there is inordinate delay in filing the application.

7. At this juncture, the learned counsel for the respondent would submit that in the event of this Court coming to the conclusion of enhancing costs on the respondent herein, the respondent undertakes to pay the reasonable enhanced costs as fixed by this Court. So far as the petitioners are concerned, they do not have any serious objection for accepting the enhanced



costs to be imposed by this Court. Further, in the interest of justice and in order to give an opportunity to the respondent herein to contest and decide the suit on merits, the civil revision petition is partly allowed as follows:-

i) the order, dated 30.04.2012 made in I.A.no.51 of 2011 in O.S.No.31 of 2001, is modified by enhancing the costs at Rs.10,000/- (Rupees ten thousand only) to be paid to the revision petitioners by the respondent within a period of two weeks from today.

ii) The petitioners herein have no objection to allow the application to be filed by the respondent before the Trial Court to set aside the exparte order.

iii) Thereafter, the Trial Court is directed to dispose of the suit, within a period of six months from the date of allowing the said petition, on merits and in accordance with law.

iv) Post the matter on 25.10.2016 only for the purpose of compliance of payment of costs.

Sd/

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate, Keeranur,
Pudukkottai.

C.R.P. (MD) .No.92 of 2015
07.10.2016

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