



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.11.2016
CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

C.R.P. PD(MD)No.1579 of 2016
and
C.M.P. (MD)No.7706 of 2016

S.Mani rep.by his power of Attorney
holder T.Russel Raj ... Petitioner / Plaintiff
Vs.

1.M.Viswam
2.Uma Viswam
3.Ms.Drishya Viswam
4.Vivek Viswam @ Kannan ... Respondents / Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.04.2016 in I.A.No.102 of 2016 in O.S.No.14 of 2016 passed by the District Judge, Kanyakumari Division at Nagercoil.

For Petitioner : Mr.R.Ramanlal
For Respondents : Mr.K.Sreekumaran Nair for R1 and R3
Mr.D.Nallathambi for R2

ORDER

The petitioner has filed this Civil Revision Petition against the order passed in I.A.No.102 of 2016 in O.S.No.14 of 2016 by the learned District Judge, Kanyakumari Division at Nagercoil.

2.The petitioner filed the suit in O.S.No.14 of 2016 before the District Court, Kanyakumari for specific performance. In the aforesaid suit, an application in I.A.No.102 of 2016 was filed under Order 39 Rule 1 and 2. In the said application an order of interim status quo was granted by the court below. Thereafter, when the matter came up for hearing on 06.04.2016, the Court below passed an order, stating that the learned counsel for the petitioner expresses apology and sought extension of interim order. Hence, the petition was closed. According to the petitioner, the said order, passed by the Court below, was not correct since no such statement was made by the learned counsel for the petitioner before the court below.

3.It is vehemently argued by the learned counsel for the petitioner that the petitioner has complied with the provisions under Order 39 Rule 3 of CPC. Therefore, there is no warrant to pass such an order under Order 39 Rule 4 of CPC.



4. On perusal of the orders it is seen that the court below has recorded the statement of the learned counsel for the petitioner as "the learned counsel expresses his apology and he seeks for extension of the interim order". Now it has been disputed by the learned counsel for the civil revision petitioner. However, there is no such specific denial raised in the affidavit filed by the revision petitioner nor any supporting affidavit has been filed by the parties concerned. Further, when such statement has been made before the concerned court, there is a remedy available to the petitioner to file an appropriate application before the same court and to establish the contention raised in the present civil revision petition. Therefore, this Court cannot entertain the civil revision petition at this stage.

5. Further, if there is any order passed under Order 39 Rule 4 of CPC, as per the settled law, the remedy is available to the petitioner to approach the appropriate Appellate Court. But in the present case, the petitioner can file an appropriate application before the same court and statement made by the learned counsel for the petitioner should be established that the petitioner has complied with the provisions as contemplated under CPC.

6. In view of the above, the Civil Revision petition is dismissed with liberty to file an appropriate application before the appropriate forum for revising the said order or modifying the said order passed by the court below, within a period of one week from the date of receipt of a copy of this order. Thereafter, the Court below is directed to dispose of the application within a period of two weeks, after providing opportunity to the parties concerned. Till such time, status quo already granted by this Court shall continue.

No costs. Consequently, connected C.M.P. is closed.

Sd/
Assistant Registrar (C.O.,)

/TRUE COPY/

Sub Assistant Registrar (A.E.,)

To

The District Judge, Kanyakumari Division at Nagercoil.

+1cc to M/s. R. Ramanlal, Advocate, in SR No. 70154.

+1cc to M/s. K. Sree Kumaran Nair, Advocate, in SR No. 70310.

+1cc to M/s. D. Nallathambi, Advocate, in SR No. 70116.

C.R.P. PD(MD) No. 1579 of 2016

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