

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2017

CORAM:

THE HON'BLE MR. JUSTICE **M.SUNDAR**

C.R.P.(PD) No.1229 of 2017

and

C.M.P.No.5804 of 2017

V.Sengottaiyan

..Petitioner

Vs.

1.Chellammal

2.Rajendan

.. Respondents

The Civil Revision has been filed under Article 227 of the Constitution of India against the fair and decretal order dated 6.3.2017 made in I.A.No.209 of 2015 in O.S.No.132 of 2010 on the file of the Subordinate Judge, Perundurai.

For Petitioner : Mr.Suganthan
for Mr.N.Manokaran

ORDER

This civil revision petition arises out of a suit being O.S.No.132 of 2010 on the file of the Subordinate Judge's Court, Perundurai. For the sake of convenience and clarity, this suit is hereinafter referred to as the second suit.

2 The lone defendant in this suit, namely, one V.Sengottaiyan, is the revision petitioner before me.

3 The suit was filed by Chellammal and Rajendran (respondents 1

and 2 before me), inter-alia with prayers for declaration that the decree passed in O.S.No.71 of 2006 is not valid. This O.S.No.71 of 2006 is hereinafter referred to as the first suit for the sake of convenience and clarity.

4 It is seen from the records that the second suit, i.e., O.S.No.132 of 2010 was dismissed for default on 23.07.2014. The plaintiffs (who are respondents 1 and 2 before me) immediately filed a restoration application under Order XXXIX Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.", for brevity). This restoration petition is I.A.No.209 of 2014 and the same was admittedly filed on 12.8.2014, which is well within the 30 days time frame prescribed for filing such restoration applications.

5 Notice was ordered in the restoration application and after full contest, in and by an order dated 6.3.2017, the trial court allowed the restoration application and restored the suit to file.

6 Aggrieved the lone defendant is before me, calling in question the order dated 6.3.2017, restoring the second suit to file.

7 In the light of the fact that this civil revision petition has been filed under Article 227 of the Constitution of India (COI) and nature of the order I propose to pass, I deem it not necessary to issue notice to the respondents.

8 The contentions raised on behalf of the revision petitioner are as follows :

(a)The affidavit filed in support of the restoration application was not duly signed;

(b)Notice as contemplated under Rule 31 sub-rule (1) of the Civil Rules of Practice under C.P.C. has not been

complied with;

(c)The second suit was dismissed for default earlier and restored. In other words, this is the second restoration application.

9 I have considered all the three points raised and also the manner in which the trial court has dealt with those points in the order, that is being called in question before me.

10 With regard to the affidavit not being duly signed, it is, no doubt, a serious error, but I am taking a liberal view of the matter, considering the fact that this is the restoration application. It is made clear that in a similar serious error in any other application, this court would take a different view of the matter.

11 With regard to the second point of Rule 31(1) of the Civil Rules of Practice being breached, the learned counsel before me would submit that the restoration application was filed on 12.8.2014 and notice of the same ought to have been given to him within three days. This submission is only stated to be rejected. The reason is Rule 31(1) reads as follows :

“31.Notice.-(1)Unless the court otherwise orders, notice of an interlocutory Application shall be given to the other parties to the suit, matter or proceeding or their pleader not less than three days before the day appointed for the hearing of the application.”

12 A perusal of Rule 31(1) would reveal that notice has to be given three days in advance. It has to be given three days prior to the day appointed for hearing of the application. This cannot be interpreted to mean that notice has to be given within three days from the date of filing.

13 As far as third and last point pertaining to this being the second restoration application, the facts of the case would reveal that the revision petitioner is, admittedly, sitting pretty as the decree in the first suit is in his favour and is operating. It is relevant to mention here that the decree in the first suit has been called in question in the second suit.

14 Owing to all that have been stated supra, all the points urged by the revision petitioner do not find favour with me. There are no merits in this civil revision petition.

15 The learned counsel for the petitioner Mr.Suganthan makes a plea that the suit is of the year 2010 and therefore, there may be a direction for disposal of the same as expeditiously as possible. The trial court is directed to dispose of the suit, namely, O.S.No.132 of 2010, as expeditiously as possible and in any event within six months from the date of receipt of a copy of this order.

16 The Civil Revision Petition is dismissed with the above direction. Consequently, the connected civil miscellaneous petition is closed.

04.04.2017

vvk

To

The Subordinate Court,
Perundurai.

M.SUNDAR, J.

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