

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.401 & 402 of 2014
& M.P.No.1 of 2014

A.Naseerullah

.. Petitioner in
both C.R.Ps'

Vs.

Inayathullah

.. Respondent in
both C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 11.11.2013 passed in I.A.Nos.165 & 166 of 2013 in O.S.No.80 of 2011 on the file of the Subordinate Judge of The Nilgiris at Udhagamandalam.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr.T.S.Baskaran

COMMON ORDER

These Civil Revision petitions are filed against the fair and decretal orders dated 11.11.2013 passed in I.A.Nos.165 & 166 of 2013 in O.S.No.80 of 2011 on the file of the Subordinate Judge of the Nilgiris at Udhagamandalam.

2.The parties and the issue involved in both the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3.The petitioner is the plaintiff and respondent is the defendant in O.S.No.80 of 2011 on the file of the Subordinate Judge of the Nilgiris at Udhagamandalam. The petitioner filed the said suit for permanent injunction against the respondent. The respondent entered appearance and was contesting the I.A.No.299 of 2011 filed by the petitioner for interim injunction. The respondent did not file written statement within the time contemplated in C.P.C or within the time granted by the Court and hence he was set exparte. The respondent filed two applications in I.A.C.F.R.No.4302 of 2012 under Section 148 of C.P.C to set aside the exparte order dated 15.10.2012 and I.A.C.F.R.No.4303 of 2012 under Order IX Rule 7 of C.P.C to enlarge the time to file the written statement. The two applications were rejected on the ground that exparte evidence was recorded and liberty was given to the respondent to invoke Order IX Rule 13 of C.P.C. Subsequently, an exparte decree was passed on 11.02.2013. The respondent immediately filed I.A.No.165 of 2013 on 18.02.2013 under Order IX Rule 13 of C.P.C to set aside the

exparte decree passed on 11.02.2013 and I.A.No.166 of 2013 under Section 148 of C.P.C to enlarge the time to file the written statement in the above suit. According to the respondent, an interim injunction was granted in I.A.No.299 of 2011 filed by the petitioner and the respondent filed C.M.A.No.80 of 2011 against the said order. The said C.M.A was allowed on 09.07.2012. The respondent filed counter affidavit in the said application for interim injunction. The respondent did not sign and file the written statement along with the application filed to set aside the exparte order as he was not in station due to his personal work.

4.The petitioner filed counter affidavit and opposed both the applications. According to the petitioner, the reason given by the respondent is without merits. The respondent was very much in station and did not file written statement in spite of taking number of adjournments and even after imposing cost on two occasions for extension of time in filing written statement. The petitioner contended that present applications are not maintainable in view of the rejection of earlier two applications in I.A.C.F.R.Nos.4302 & 4303 of 2003 filed by the petitioner and prayed for dismissal of the application.

5.The learned Judge, considering the averments made in the affidavit, counter affidavit and materials on record, allowed both the applications, imposing cost of Rs.2,000/- in each of the applications.

6.Against the said order dated 11.11.2013, passed in I.A.Nos.165 & 166 of 2013 in O.S.No.80 of 2011, the present two Civil Revision Petitions are filed by the petitioner.

7.Both the learned counsel for the petitioner as well as the respondent reiterated their respective averments made in the affidavit, counter affidavit and contentions raised in the grounds of revision.

8.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

9.From the materials on record, it is seen that the respondent has filed two applications to set aside the exparte order dated 15.10.2012 and to enlarge the time to file the written statement. The learned Judge, by the order dated 11.12.2012, without numbering both the applications filed by the respondent, proceeded

with suit by recording the exparte evidence and rejected both the applications on the ground that exparte evidence was recorded and also granted liberty to file application under Order IX Rule 13 C.P.C. In view of the liberty given by the learned Judge, the respondent filed two applications under Order IX Rule 13 of C.P.C to set aside the exparte decree dated 11.02.2013 and Section 148 of C.P.C for enlarging the time to file the written statement. As per the Order VIII Rule 1 of C.P.C, defendant has to file written statement within 30 days of service of summons on him and Court has power to extend the time by recording the reasons in writing and Court has power to extend the time up to 90 days from the date of service of summons. The Court has power to extend the time beyond 90 days on exceptional condition based on subjective satisfaction of the Court.

10. In the present case, the applications filed before passing of exparte decree was not numbered and considered on merits and the same was rejected on the ground that exparte evidence was recorded. Subsequently, the exparte decree was passed. The learned Judge, considering all the above facts, in order to avoid multiplicity of proceedings, in the interest of justice and for proper and complete adjudication of the parties, allowed both the

applications. The learned Judge has exercised his discretion and extended time in filing the written statement. It is pertinent to note that respondent has filed written statement along with the application. The learned Judge has exercised his discretion and has given cogent and valid reason for allowing the applications.

11. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed. The suit is of the year 2011. The learned Subordinate Judge is directed to dispose of the suit as expeditiously as possible and in any event not later than 3 months from the date of receipt of a copy of this order.

08.12.2017

Index: Yes/No
gsa

सत्यमेव जयते

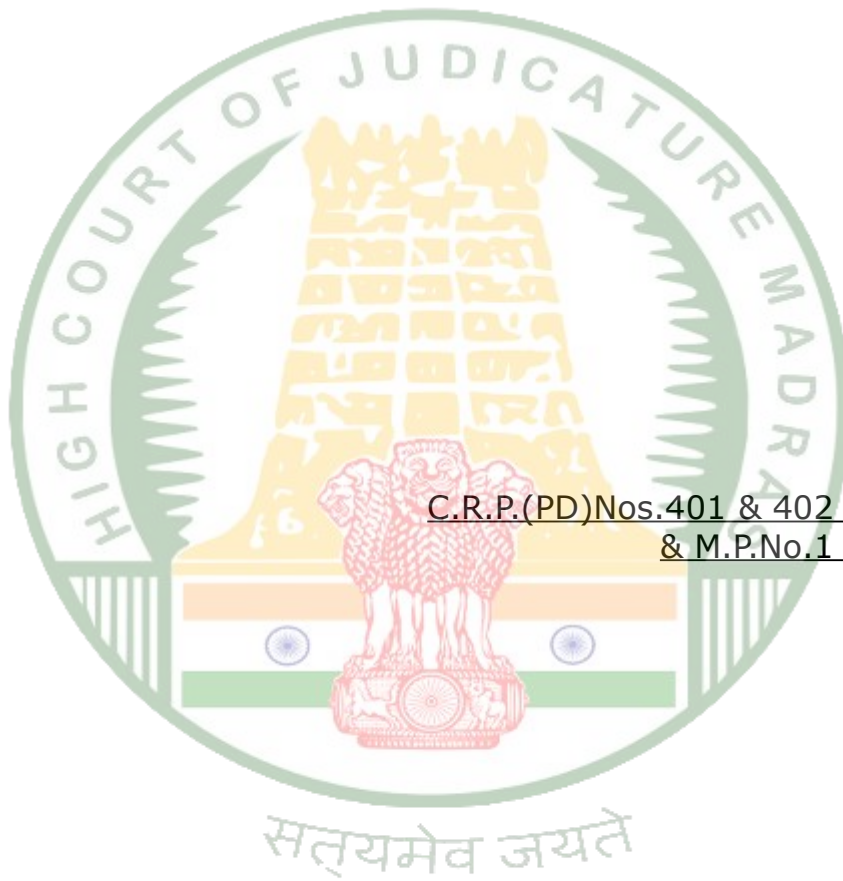
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To

The Subordinate Judge,
The Nilgiris,
Udhagamandalam.

V.M.VELUMANI, J.

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