

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.138 of 2009
and M.P.No.1 of 2009 & CMP No.6403 of 2016

V.Muthulingam ... Petitioner

Vs.

1.V.Gunasekaran
2.V.Radhakrishnan ... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dt.05.11.2008 made in I.A.No.212 of 2008 in O.S.No.187 of 2004 on the file of the Principal District Munsif Court, Ulundurpet.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.T.Jayaraman for R1
Mr.S.Saravanakumar
for R2

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ORDER

This Civil Revision Petition has been filed against the order and decretal order dt.05.11.2008 made in I.A.No.212 of 2008 in O.S.No.187 of 2004 on the file of the Principal District Munsif Court, Ulundurpet.

2. The petitioner is the plaintiff, the first respondent is the 2nd defendant and the second respondent is the 1st defendant in O.S.No.187 of 2004 on the file of Principal District Munsif Court, Ulundurpet. The petitioner filed the above suit for declaration and injunction against the respondents. The first respondent entered appearance and did not file written statement. Hence, he was set exparte on 09.02.2005. The first respondent filed I.A.No.212 of 2008 in O.S.No.187 of 2004 to set aside the exparte order dt.09.02.2005 passed against him.

3. According to the first respondent, his previous counsel was conducting other cases on his behalf and he has given number of vakalats to him. His Advocate filed vakalat in the present suit without his instruction and did not about the suit. The first respondent also further stated that he underwent bypass surgery on 14.11.2003 at Chennai and he had to stay at Chennai for frequent check-up. Further, he was suffering from hypertension and giddiness and he could not move anywhere without the help of others. When the first respondent met his counsel at Villupuram, he informed him that he was set exparte on 09.02.2005 and returned the case bundles to him.

4. The petitioner and the second respondent filed separate counters and denied all the averments made in the affidavit filed in support of the above application. According to the petitioner, the suit had been proceeded with and evidence on behalf of the petitioner and second respondent were let in and closed after cross examination and the suit is posted for arguments. If exparte order is set aside, it will cause hardship. The petitioner has further stated that the first respondent has not stated the interest he had in the suit property and only to harass the petitioner and his wife, the first respondent has filed the present application.

5. The second respondent filed counter and denied that the first respondent underwent bypass surgery and stated that the first respondent was watching the proceedings from the beginning and as a law graduate and a retired officer of HR&CE Department, the first respondent is conducting various cases in the court and deliberately to drag on the proceedings, he has filed the present application.

6. The learned Judge, considering the averments in the affidavit, counter affidavit, the nature of the suit, the fact that the

petitioner and respondents are brothers and the petitioner had underwent bypass surgery and to give an opportunity to the first respondent to conduct the case on merits, allowed the application on payment of cost of Rs.2,000/- to the petitioner and Rs.1,000/- to the second respondent.

7. Against the said order dated 05.11.2008 made in I.A.No.212 of 2008 in O.S.No.187 of 2004, the present Civil Revision Petition has been filed.

8. The learned counsel for the petitioner submitted that the first respondent has filed the application to set aside the exparte order, after a lapse of more than three years and the learned Judge has failed to note the fact that witnesses were examined, cross examined on behalf of the petitioner and second respondent and the suit was posted for arguments. The petitioner's side argument was over and suit was posted for the argument of the second respondent. The learned Judge failed to see that the petition filed by the first respondent is barred by law of limitation as he failed to file the application within the time frame. The first respondent has not given any valid reason for the delay in filing the application and prayed for dismissal of the petition.

9. Mr.T.Jayaraman, learned counsel appearing for the first respondent submitted that the party has taken change of vakalat from him and he has no instructions.

10. The learned counsel appearing for the second respondent submitted that the first respondent has not given any valid reason for condoning the delay. The first respondent has been watching the proceedings from the beginning and being a law graduate and a retired Asst. Commissioner of HR&CE Department, ought to have been vigilant enough to conduct the case. The first respondent conducted number of cases in the same court and prayed for dismissal of the petition and speedy disposal of the suit.

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

12. According to the first respondent, he underwent bypass surgery on 14.01.2003 but vakalat was filed on his behalf on 17.06.2004 and was set exparte on 09.02.2005. Considering these facts, the submission of the first respondent that his advocate

entered appearance without instruction and has not informed him about the suit proceedings to the first respondent is unbelievable. The first respondent has admitted that number of suits are pending between the parties and he has admitted that he has given number of vakalats to his advocate. This fact clearly shows that the first respondent has given instruction to enter appearance as and when suits are filed against him. The first respondent entered appearance through his advocate and filed vakalat on 17.06.2004 and the first respondent was set exparte on 09.02.2005. The first respondent has not given any valid reason as to why he has not contacted his advocate till 03.03.2008 when he filed application to set aside the exparte order.

13. The first respondent has not disputed the fact that he is a law graduate and a retired Asst. Commissioner of HR&CE Department and conducted all other cases through the same advocate who earlier appeared on his behalf. The learned Judge has failed to consider the fact that the trial in the suit was completed till the date of arguments on behalf of the petitioner and the suit was posted for arguments on behalf of the second respondent. The learned Judge has allowed the application on the ground that the petitioner and the respondents are brothers and

that the first respondent must be given an opportunity to put forth his case on merits. The learned Judge failed to consider the stage at which the first respondent has filed the application to set aside the exparte order and objections of the petitioner and the second respondent, in proper perspective and committed an irregularity in allowing the application. Hence, the order dt.05.11.2008 made in I.A.No.212 of 2008 in O.S.No.187 of 2004 is liable to be set aside and it is hereby set aside.

14. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. Considering the submissions of the learned counsel for the petitioner as well as the second respondent, since the suit is of the year 2004, the learned Judge is directed to dispose of the suit within a period of two (2) months from the date of receipt of a copy of this order.

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16.08.2017

Index : Yes/No
rgr

To

The Principal District Munsif Court,
Ulundurpet.

V.M.VELUMANI, J.

rgr



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