

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.1464 of 2012 and
M.P.No.1 of 2012

1.Appusamy
2.Thangammal

...Petitioners

Vs

R.Kannan

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 07.12.2011 made in I.A.No.733 of 2011 in I.A.No.61 of 2007 in O.S.No.256 of 2005 on the file of Additional District Munsif, Namakkal.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Ms.S.Aiyshwarya for
M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is directed against the order dated 7 December, 2011, dismissing the application filed by the petitioner for enlarging the time for payment of cost.

2. Heard the learned counsel for the petitioners. I have also heard the learned counsel for the respondent.

3. The respondent filed a suit in O.S.No.256 of 2005 for specific performance on the strength of an agreement alleged to have been executed by the petitioners. The suit was contested by the petitioners by filing written statement. The petitioners were set ex parte subsequently and the same resulted in passing an ex parte judgment and decree on 2 November, 2006 by the learned Additional District Munsif, Namakkal.

4. The petitioners filed an application to set aside the ex parte decree. The application was allowed subject to payment of a sum of Rs.2,000/- as cost. The cost amount was not paid within the time stipulated by the Court. Since cost amount was not paid, the application was dismissed.

5. The petitioner filed an application for restoring the application, which was dismissed for default. Since a technical objection was raised

with respect to the maintainability of the said application, the petitioners filed an application to enlarge the time. The application was dismissed on the ground that sufficient reasons were not given.

6. The Trial Court after setting the petitioners ex parte passed a judgment and decree ex parte on 2 November, 2006. I have perused the judgment in O.S.No.256 of 2005. The judgment is bereft of particulars. In a suit for specific performance, the Trial Court was expected to consider as to whether the plaintiff has been ready and willing to perform his part of the contract. There should also be a factual finding to the effect that the plaintiff has come to the Court with clean hands. The judgment in O.S.No.256 of 2005 is in the nature of a default decree. The failure on the part of the petitioners to appear before the Trial Court alone made the Court to pass an ex parte judgment. This judgment would not qualify to be called as a judgment governed by the provisions of the Code of Civil Procedure.

7. The petitioners in the affidavit filed in support of the application in I.A.No.733 of 2011 indicated the reasons for the delay in paying the cost. The application has to be considered in the light of the ex parte judgment and decree in O.S.No.256 of 2005. Since the

judgment was not on merits, necessarily, opportunity should be given to the petitioners to contest the suit. I am therefore of the view that the impugned order is liable to be set aside.

8. In the result, the order dated 7 December, 2011 is set aside. The application in I.A.No.733 of 2011 is allowed, subject to payment of Rs.5,000/- as cost. The cost amount shall be paid to the respondent directly, on or before 3 July 2017. In case of any difficulty to pay the cost to the respondent, it is open to the petitioners to deposit the amount before the Trial Court on the credit of O.S.No.256 of 2005 in which case, the respondent is entitled to make an application for withdrawal of the cost amount.

9. The learned Additional District Munsif, Namakkal is directed to post the suit on 6 July 2017 for confirmation with regard to payment of cost and thereafter take up the matter for trial.

10. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2017

svki

Note : Issue the order by 14.06.2017

To

The Additional District Munsif
Namakkal.

K.K.SASIDHARAN,J.

(svki)

C.R.P.(N.P.D.) No. 1464 of 2012

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