

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.3240 of 2013
and
M.P.No.1 of 2013

G.Devanathan

.. Petitioner

Vs.

1.M.Thiyagarajan

2.M.Karunanithi

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal order dated 13.02.2013 in I.A.No.1365 of 2011 in O.S.No.125 of 2011 on the file of the Principal District Munsif Court, Ulundhurpet.

For Petitioner : M/s.Elizabeth Ravi

For Respondents : Mr.G.Ranganathan

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ORDER

This revision is directed against the order dated 13.2.2013 made in I.A.No.1365 of 2011 in O.S.No.125 of 2011 on the file of the

Principal District Munsif Court, Ulundhurpet. The petitioner herein is the defendant in the suit.

2. The plaintiffs have filed the suit for declaration and for permanent injunction restraining the defendant from trespassing into the suit property and not to demolish the house. Along with the suit, the plaintiffs have filed I.A.No.625 of 2011 seeking ad-interim injunction. Since the defendant has not filed the counter, he was called absent and ex parte order was passed in I.A.No.625 of 2011 on 20.10.2011.

3. The petitioner, who is the defendant, has filed I.A.No.1365 of 2011 seeking to set aside the ex parte order dated 20.10.2011 passed in I.A.No.625 of 2011. In the affidavit filed in support of the petition, it is stated that on 20.10.2011 when the petition was listed for filing counter, due to ill-health the petitioner could not attend the Court and file the counter. Further, due to delay in getting the documents, he could not file the counter on 20.10.2011. The failure on the part of the petitioner in filing the counter on 20.10.2011 is neither wilful nor wanton. Hence, he prays for setting aside the ex parte order dated 20.10.2011 passed in I.A.No.625 of 2011.

4. Denying the averments in the petition, the plaintiffs have filed the counter stating that the petition is not maintainable either in law or on facts. The petitioner is put to strict proof of the averments stated in the affidavit. It is stated that despite several opportunities given to the petitioner, he has not filed the counter and, therefore, prays for dismissal of the petition.

5. Upon consideration of the rival submissions, the trial Court allowed the petition subject to payment of costs of Rs.1500/- to the plaintiffs on or before 12.02.2013, failing which the petition shall stand automatically dismissed and directed the matter to be listed on 13.02.2013.

6. Aggrieved by the imposition of costs ordered by the trial Court, the petitioner has filed the present revision on the following grounds:

- (i) the trial Court ought not to have imposed any costs for allowing such application;
- (ii) the trial Court failed to consider that it is a statutory right conferred upon any party to contest an application by filing his counter and such right cannot be curtailed or severed, simply for the reason that the same was not

filed in time;

(iii) the trial Court had not taken into account the valid and genuine reasons given by the petitioner for his non-filing of counter within the time, and

(iv) in any case, the cost imposed by the trial Court is onerous.

7. I heard M/s.Elizabeth Ravi, learned counsel for the petitioner and Mr.G.Ranganathan, learned counsel for the respondents and perused the materials available on record.

8. Learned counsel for the petitioner submits that while allowing the petition to set aside the ex parte order passed in I.A.No.625 of 2011, the trial Court ought not to have imposed costs. Therefore, the order of the trial Court qua imposition of costs is liable to be set aside.

9. On the other hand, the learned counsel appearing for the respondents submits that despite several opportunities given to the petitioner, he has not filed the counter and, therefore, ex parte order was passed. Learned counsel would submit that the trial Court ought to have dismissed the petition to set aside the ex parte order made in I.A.No.625 of 2011.

10. In its order, the trial Court observed that despite several opportunities granted to the petitioner to file counter in I.A.No.625 of 2011, he has not filed the counter. Finally, when the matter was called on 20.10.2011, the petitioner has not filed the counter and ex parte order was passed. The trial Court further observed that though the petitioner pleaded that he was not feeling well on 20.10.2011, he has not filed any proof showing that he was really not well, and that in order to give a chance to the petitioner to prove his case, in the interest of justice, the petition to set aside the ex parte order is allowed subject to payment of costs of Rs.1500/- payable to the plaintiffs.

11. The submission of the petitioner is that when the trial Court decided to give an opportunity to contest the case, it ought not to have imposed the costs while allowing the petition.

12. Even though imposition of costs is ordinarily a power and prerogative of the trial Court and such power is to be exercised on an overall consideration of the facts and circumstances of the case and the revisional Court normally would not be inclined to interfere with the discretion exercised by the trial Court in this regard, unless such

discretion has been exercised without due regard to the relevant facts and circumstances of the case, considering the fact that the reason stated by the petitioner is ill-health, this Court takes a lenient view and accepts the plea of the petitioner.

13. The petitioner seeks to set aside the ex parte order only in an Interlocutory Application. As stated supra and as argued by the learned counsel for the petitioner, the trial Court ought not to have imposed costs for allowing such application. Therefore, the order of the trial Court qua imposition of costs is liable to be set aside.

14. In the result:

(a) this Civil Revision Petition is partly allowed and the order in I.A.No.1365 of 2011 in O.S.No.125 of 2011, dated 13.02.2013 is set aside in respect of imposing cost of Rs.1,500/-;

(b) the trial Court is directed to dispose the I.A.No.625 of 2011 on merits within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2013 is closed.

06.01.2017

Note: Issue order copy on 16.03.2018

VS

Index : Yes/No

Internet : Yes/No

To

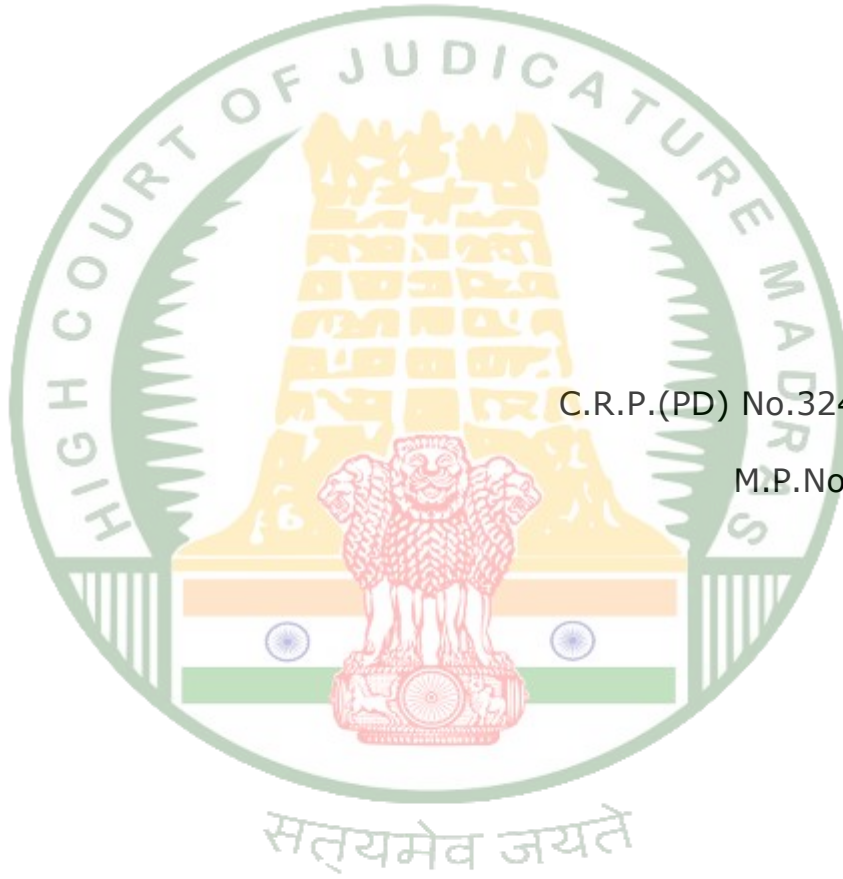
The Principal District Munsif,
Ulundhurpet.



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M.V.MURALIDARAN,J.

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