

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD).No.3436 of 2013 and
M.P.No.1 of 2013**

1.Duraisamy Reddiyar (Deceased)
Family Manager
2.Andal
3.R.Dilip
4.Dr.D.Sridharan
5.Dr.D.Chandrasekaran
6.D.Manokaran
7.V.Alageswari .. Petitioners
(Petitioners 2 to 7 brought on record as
LRs of the deceased sole petitioner vide
Order of Court dated 18.02.2015 made
in MP.Nos.1 and 2 of 2015)

Vs.

Balakrishnan ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.99 of 2013 in O.S.No.551 of 2004, dated 09.07.2013, on the file of the District Munsif, Perambalur.

For Petitioners : Mr.Yogesh Kannadasan
for M/s.V.J.Latha
For Respondent : Mr.R.Parthiban

ORDER

The defendant in O.S.No.551 of 2004 is the Civil Revision Petitioner before this Court, challenging the order passed in I.A.No.99 of 2013 in O.S.No.551 of 2004 dated 09.07.2013, on the file of the learned District Munsif Court, Perambalur.

2.It is the case of the defendant is that the plaintiff has filed the suit in O.S.No.551 of 2004 against this respondent/defendant before the learned District Munsif Court, Perambalur in O.S.No.551 of 2004 for declaration and for permanent injunction. The petitioner, who is the defendant has filed his written statement denying the allegations set out in the plaint and also filed counter claim in the said suit. Originally the suit was dismissed for default on two occasions. Therefore, the plaintiff has filed a petition on the two occasions to restore the suit and both the occasions the suit was restored at the instance of the plaintiff. Again on restoring the above suit, the suit was posted on 18.09.2012 and 28.09.2012 for hearing and on behalf of the respondent/plaintiff,

an application for adjournment was filed and the suit was adjourned to 09.10.2012, but even then on the said date i.e. on 09.10.2012, the plaintiff has not appeared, therefore, the suit was again dismissed for default on the 3rd occasion. Though the suit was decreed against the respondent/plaintiff has been taken up on 29.10.2012 and on 01.11.2012, while the suit was dismissed for default, the counter claim was decreed in favour of the petitioner/defendant. Therefore, the plaintiff has filed applications for restore the suit on the ground that the hearing dated 09.10.2012 was not properly informed by his counsel. Therefore, the suit was dismissed for default and counter claim was decreed in favour of the defendant. Therefore, the respondent/plaintiff has prayed the trial Court namely, the District Munsif Court, Perambalur to restore the suit in O.S.No.551 of 2004, which was dismissed for default on 01.11.2012.

3.Considering both side cases, the learned District Munsif Court, Perambalur was pleased to allow the I.A.No.99 of 2013, on condition that the respondent should pay a sum of Rs.300/- to this petitioner/defendant on or before 26.07.2013, failing which the petition will be dismissed. Challenging the said order, this petitioner,

who is the defendant has filed the present Civil Revision Petition before this Court.

4.I heard Mr.Yogesh Kannadasan for M/s.V.J.Latha, learned counsel appearing for the petitioners and Mr.R.Parthhiban, learned counsel appearing for the respondent and perused the entire records.

5.The suit has been filed by the respondent/plaintiff against this petitioner/defendant for declaration and for permanent injunction and the said suit was filed in the year 2004. Denying the plaint averments made by the respondent, the petitioner/defendant has filed his written statement with the counter claim.

6.The Judgment was referred by the petitioners and the respondent in the following cases:

(1) The judgment produced by the petitioners in the case of **Parimal v. Veena @ Bharti** reported in **(2011) 4 MLJ 540 (SC)**.

(2) The judgments produced by the respondent in the case of (i)**Rafiq and another v. Munshilal and**

another reported in **1981 AIR 1400** and (ii) **Ponnusamy Poosari and another v. Nallan Poosari and 3 others** reported in **2009 (2) CTC 132**.

7. It is admitted fact that if on one occasion already the suit was dismissed for default that can be restored, but in this case earlier on two occasions, the suit was dismissed for default and this was third occasion.

8. On 3rd occasion, the suit was dismissed for default and the counter claim was allowed in favour of this petitioner/defendant on 01.11.2012. The trial Court must have seen the proceeding of the cases and nature of the cases filed. Admittedly, the suit has been filed in the year 2004, more than 13 years lapsed, but till the suit has been restored one after another application filed by the respondent/plaintiff. Whenever applications filed by the respective parties either to restore or to set aside the exparte, the trial Court must have looked into the nature of the case as well as the pendency of the case. When the suit was dismissed for default on two occasions, the Court must have looked into the attitude of the plaintiff, since he has not appeared on two occasions, after restoration on two occasions again on 3rd

occasion, the suit was dismissed for default, but even then, the learned Judge has allowed the application on the 3rd occasion, this Court totally unsatisfied with the order passed by the learned Judge in I.A.No.99 of 2013, by allowing the restoration application on 3rd occasion.

9. When the suit was dismissed for default on 3rd occasion, it is bounded duty of the Court to consider the nature of the suit and also attitude of the plaintiff by totally three occasions, the plaintiff was absent himself and let it the suit was dismissed for default, and only reason has given by the plaintiff is that his counsel was not informed the proper hearing date. I do not understand that when the suit was filed by the plaintiff and engaging the counsel, it is bounded duty of the plaintiff to appear before the Court on every hearing and also get the necessary Court proceedings from his counsel, but in the case on hand, on three occasions the plaintiff states that his counsel was not informed the correct hearing date of the case.

10. In a case, I decided that it is the bounded duty of the parties should approach their advocate and get the proper instructions of the hearing date and they should not blame their advocates. But in the

case on hand, a burden was shifted by the plaintiff on their advocates. Therefore, the order passed by the learned Judge in allowing the application in I.A.No.99 of 2013 on three occasions accept the reason given by the plaintiff that the counsel was not properly informed the hearing date of 09.10.2012, it is not proper. Therefore, this Court warranting interference of the order in I.A.No.99 of 2013 passed by the learned District Munsif, Perambalur and accordingly, this civil revision petition is liable to be allowed by setting aside the order passed in I.A.No99 of 2013.

11.In the result, this civil revision petition is allowed by setting aside the order passed in I.A.No.99 of 2013 in O.S.No.551 of 2004 dated 09.07.2013, on the file of the District Munsif, Perambalur. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2017

vs

Index:Yes

Speaking order

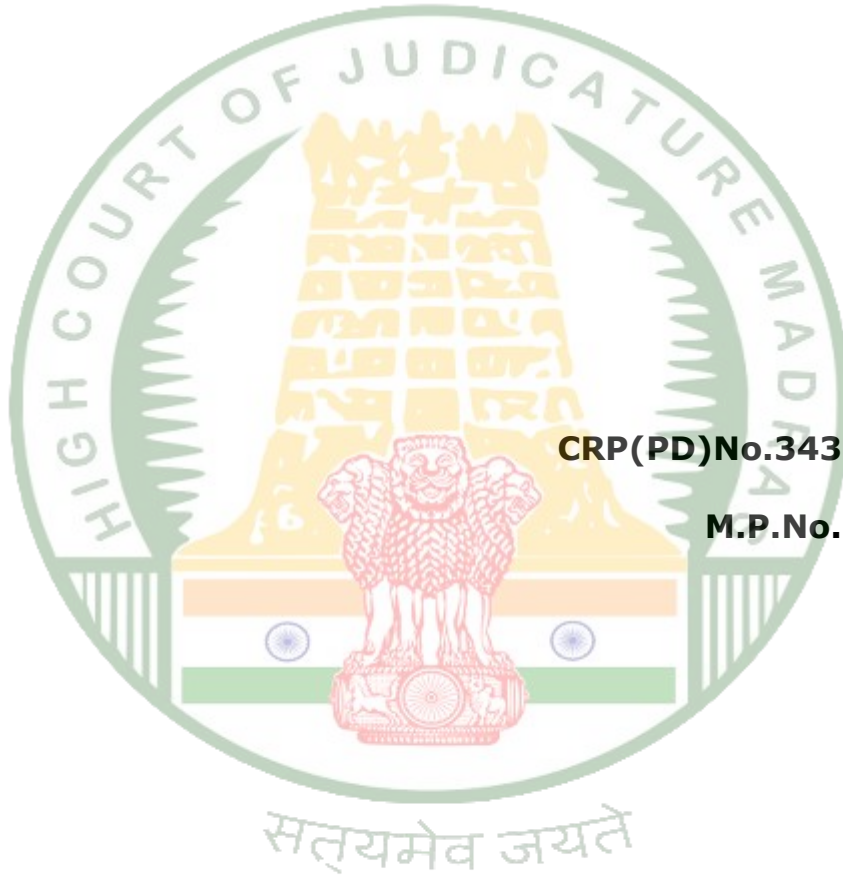
To

The District Munsif Court,
Perambalur.

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M.V.MURALIDARAN,J.

VS



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