

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.02.2017

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The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(PD).No.4514 of 2012
and
M.P.No.1 of 2012

1.Rangammal
2.Baby
3.Muthusamy

.. Petitioners

vs.

Nanjammal

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal orders dated 13.09.2012 in I.A.No.541 of 2012 in O.S.No.797 of 2006 on the file of II Additional Subordinate Judge's Court, Coimbatore.

For Petitioners : M/s.C.R.Prasanan

For Respondent : No appearance

ORDER

The Defendants 2, 6 and 7 are the revision petitioners before this Court. Challenging the order passed in I.A.No.541 of 2012 in O.S.No.797 of 2006, dated 13.09.2012, on the file of II Additional Subordinate Judge's Court, Coimbatore, the revision petition has been filed.

2. The case of the petitioners is that the suit was filed by the plaintiff/respondent herein and an ex-parte order was passed against the defendants/petitioners. Therefore, the petitioners, who are the defendants 2, 6 and 7 were filed an application in I.A.No.233 of 2012 in O.S.No.797 of 2006 in set aside exparte decree dated 19.11.2011. The said application was allowed on condition that the petitioners should pay the cost in the order of set aside the exparte decree, against which, an application in I.A.No.541 of 2012 in I.A.No.233 of 2012 in O.S.No.797 of 2006 was filed by the petitioners seeking extension of time for payment of cost from 18.06.2012 and the same was dismissed on 13.09.2012.

3. The petitioners were given a reason stating that, though the petitioner/7th defendant in the suit is taking care of the case and the order of the Court for paying the cost was informed to him. The

petitioner filed an application to set aside the exparte order. Due to ill health of his son, the third petitioner was unable to pay the cost. Therefore, they filed the application in I.A.No.541 of 2012 for extension the time for making payments of cost ordered by the trial.

4. The Gist of the counter affidavit filed by the plaintiff stating that there are three petitioners in the petition and they were represented through their Advocate and inconvenient to any one of the petitioners cannot be a cause for non payment of costs of the specified date. The present petition for enlargement of time for payment of costs after dismissal of the suit is not sustainable in law. The petition is liable to be dismissed, though the petitioners/defendants 2,6 and 7 have not given any reasonable cause for non payment of the said amount.

5. Considering the both sides cases, the learned Second Additional Subordinate Judge, Coimbatore has dismissed the application on the ground that after the amendment made in Section 148 of the Civil Procedure Code, the power of the Court to enlarge time restricts and the period shall not exceeded 30 days. However, for invoking Section 151 of CPC, the petitioners must have shown that they were prevented from making payment which is beyond the

control of the party. The learned Judge also stated that the first petitioner could have paid the cost through other petitioners, which is not convinced to order for extension of time. This petition lacks bonafide and hence, dismissed with costs. Challenging the said order, the petitioners were filed the present revision petitioner before this Court.

6. Mr.C.R.Prasanan, learned counsel appearing for the petitioners. None appearance for the respondents and perused the materials available on record.

7. Admittedly, the II Additional Subordinate Court, Coimbatore, has allowed the set aside application in I.A.No.233 of 2012, on condition that the petitioners should pay the cost amount on or before 18.06.2012 but the said order was not complied with by the petitioners. The only reason given by the petitioners is that the third petitioner's son was ill health but could not able to pay the said amount. Since, the third petitioner alone was taking care of the case. The respondent/plaintiff argued that though the third petitioner's son was ill health but the petitioners 1 and 2 could have to make the payment of the cost as per the order passed in I.A.No.233 of 2012.

8. Admittedly, the petitioners have not complied the order of the trial Court on the ground that the Court is not convinced on seeking the situations of the petitioners and dismissed the interlocutory application. Challenging, the said order, this Civil Revision Petition is filed in the year 2012, which is unnecessarily pending for more than 5 years.

9. The Trial Court, while passing orders on the interlocutory application, should not pass the orders fir creating multiplicity of proceedings. This Court relied upon the authorities reported in **2009(2) TNCJ 579**. The said contention of the respondent was strongly controverted by the petitioners by stating that Section 148 CPC confers ample discretionary powers regarding the enlargement of time and Section 151 CPC also provides the inherent powers to make any order that is necessary for ends of justice.

10. Therefore, while passing the orders, the Courts must have looked into these type of petitions. If the Courts have enlarged the time, there was no prejudice caused by the respondents. Since it is only the payment of costs and it was already ordered by the Court by allowing the set aside application.

11. Time and again, this Court and the Hon'ble Apex Court very categorically held that the suit like declaration, partition and specific performance should not be let in to an exparte order. But, admittedly in this case, this suit filed by the respondent/plaintiff is a partition suit. Therefore, this Court must have looked into all aspects of the plaintiff and the defendants case. Since they are all relatives to each other and setting aside the exparte decree and an extension of time for payment of costs would not prejudice any way to either parties. But when the Courts have declined to extent the time for payment of costs to set aside the exparte decree, then the Court's orders would amounts to injustice against the other party. Therefore, the Trial Court must have passed orders with a judicial view and judicial conscious. But in this case both was lack on the part of the II Additional Subordinate Court, Coimbatore.

12. In the above circumstances, it is just and necessary for interference of this Court for setting aside the said order and accordingly, the order passed in I.A.No.541 of 2012 in O.S.No.797 of 2006 on the file of the II Additional Subordinate Court, Coimbatore is set aside and the time is extended for a period of two weeks for payment of the cost.

13. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order dated 13.09.2012 in I.A.No.541 of 2012 in O.S.No.797 of 2006 on the file of II Additional Subordinate Judge's Court, Coimbatore;

(b) The petitioners/defendants 2,6 and 7 are hereby directed to pay the costs ordered in I.A.No.233 of 2012 in O.S.No.797 of 2006, dated 26.03.2012, on the file of the II Additional Subordinate Court, Coimbatore, within a period of two weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition is automatically dismissed.

M.V.MURALIDARAN,J.

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(c) On production of payment receipt within the stipulated period of time, the Trial Court is directed to dispose the suit in O.S.No.797 of 2006, within a period of two months on day today

basis, without giving any adjournments to either parties and both the parties are hereby directed to give their fullest Co-operation for early disposal of the suit. No costs. Connected miscellaneous petition is closed.

13.02.2017

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Index:Yes/No

Internet:Yes/No

Note:Issue order copy on 03.03.2017

To

The II Additional Subordinate Court,
Coimbatore.

CRP(PD)No.4514 of 2012

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