



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (PD) (MD) No.1173 of 2017

S.K.Naganathan ... Revision Petitioner/ Respondent/Plaintiff

Vs.

1.The Joint Secretary,
Ministry of Law Justice,
Department of Legal affairs,
Government of India,
4th floor Shashthri Bhavan,
New Delhi - 110 001.

2.The Deputy Legal Advisor & CA,
Ministry of Law Justice,
Department of Legal affairs,
Government of India,
4th floor Shashthri Bhavan,
New Delhi - 110 001.

... Respondents / Petitioners
Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order, dated 11.11.2016 made in I.A.917 of 2016 in O.S.245 of 2016 on the file of the Principal District Munsif, Madurai Town.

For Petitioner : Mr. S.K.Naganathan
Party-in-person.

ORDER

Heard the petitioner/plaintiff, who appeared in person. The revision petitioner was given license by the Central Government as notary. During his tenure as notary based on complaint for misconduct, his license was terminated. Aggrieved by that the suit has been filed, seeking injunction and declaration that the order terminating his license as notary is null and void. The trial Court has taken the plaint on file, without averring anything about the maintainability of the suit.

2.Pending the suit, the defendants namely, Joint Secretary, Ministry of law Justice, and Deputy Legal Advisor & CA, Ministry of Law Justice, did not appear either in person or through counsel, hence they were set exparte on 22.08.2016.



3. One Mr.S.Sudarsan, Junior Advocate to the Central Government Standing Counsel had filed an affidavit and petition stating the reasons for non-appearance on 22.08.2016 and sought for setting aside the order of ex-parte passed against the defendants. This application has been contested by the plaintiff on the ground that the affidavit accompanying the petition to set aside the ex-parte order should be sworn by the concerned parties and not by the counsel. Hence, when the affidavit filed in support of petition is not sworn by the concern party the petition is not maintainable.

4. The Principal District Munsif, Madurai has held that any person, who is conversant with the facts can file an affidavit. In this case one Mr.S.Sudarsan Junior Advocate to the Central Government Standing Counsel is conversant with the facts of the case, so had filed the affidavit. Therefore, the objection raised by the respondent/plaintiff is not acceptable.

5. When this Court put up a question to the revision petitioner as to whether there is any statutory bar for the third party to swear the application or whether there is any mandatory provision that only the party to the suit should swear the affidavit, he is not able to indicate any such provision under law. Normally, the procedure adopted in the Courts are, in case of dismissal or ex-parte order, the person who is well versed with the facts can swear the affidavit along with the petition, assigning the cause for non-appearance and the Court, considering the cause shown in the affidavit, either allow the application or dismiss it for the reasons stated.

6. It is specifically averred in the affidavit that the defendants have instructed the Assistant Solicitor General of India, Madras High Court, Madurai Bench, to appear on behalf of them and contest the case, who in turn instructed the Central Government Standing Counsel appointed for the Madurai City Court to enter appearance on behalf of the defendants. Due to communication gap, the said instructions could not reach the Central Government Standing Counsel, under whom he was working as Junior Counsel which has led to ex-parte order being passed by the Trial Court. The relevancy of the cause shown and whether the person who has shown the cause is conversant to the fact are the points for consideration, by the Court. In this case, the Trial Court has rightly considered the competency and content of the affidavit. This Court finds no reason to entertain the revision petition. Hence, this revision petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)



To

The Principal District Munsif,
Madurai.

KM/LS

MAS/GT/SAR2:07.07.2017:3P-2C

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