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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.157 of 2017 (PD)
and
C.M.P(MD)No.624 of 2017

Veeramani .. Petitioner/ Petitioner/13th Defendant

Vs.

1.Rajeshwari ..Respondent/1st Respondent/Plaintiff
2.Sivaperumal
3.Tamilselvi
4.Arundathi
5.Periyasamy
6.Amuthavalli
7.Narayanasamy
8.Gopinath
9.Logammal
10.Janaki
11.Indirani
12.M/s.Soundarajan Mills Ltd.,
thro'its Chairman and Executive Director,
Ranjit Soundirarajan
S/o.Soundirarajan,
G.T.N.Salai,
Dindigul Town.
13.S.Samudesswari ..2 to 12 Respondents/2 to 12 Respondents/ Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the dismissal order passed in I.A.No.184 of 2016 in O.S.No.29 of 2011, dated 16.09.2016 on the file of Additional District Judge, Dindigul, dated 16.09.2016 by allowing this Civil Revision Petition.

For Petitioner : Mr. D.Selvaraj

ORDER

The petitioner has filed this Civil Revision Petition to set aside the dismissal order passed in I.A.No.184 of 2016 in O.S.No.29 of 2011, dated 16.09.2016 by the Additional District Judge, Dindigul, dated 16.09.2016.

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2.The petitioner and first respondent filed suit in O.S.No.29 of 2011 before the Additional District Judge, Dindigul against the

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respondents 2 to 12 for partition. After completion of evidence, suit was posted for arguments. At that time, the petitioner and first respondent filed application in I.A.No.214 of 2015 for transposing the petitioner as 13th defendant and the said application was allowed on 12.1.2016 transposing the petitioner as 13th defendant. According to the first respondent, after the death of petitioner's husband on 19.8.2014, the petitioner is not co-operating in conducting the case. The suit was posted for filing written statement of the petitioner. The petitioner after taking number of adjournment did not file any written statement. Therefore, she was set ex-parte. The petitioner filed I.A.No.184 of 2016 to set aside the ex-parte order. The first respondent filed counter and contended that the petitioner after death of her husband on 19.08.2014, received money from the second respondent/first defendant and released her share in favour of first defendant and has no interest in conducting the case. Therefore, the first respondent filed Interlocutory Application to transpose the petitioner as 13th defendant. After being transpose as 13th defendant, she has not filed written statement inspite of taking number of adjournments. At the instigation of second respondent, she has filed application only to fill in lacuna and to drag on the proceedings. The petitioner has not given any reason for not filing written statement in time and prayed for dismissal of the application.

3.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record and also the fact that the suit is pending at the stage of arguments for more than 2 years as parties were filing one after another application, finally arguments were heard and suit is about to post for judgment, the petitioner has filed application and she has not given any reason for not filing written statement, dismissed the application.

4.Against the said order of dismissal, the petitioner has filed the present civil revision petition.

5.The learned counsel for the petitioner submitted that the learned Judge ought to have considered the application to set aside the ex-parte order liberally and erred in dismissing the application.

6.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

7.From the materials on record, it is seen that originally the petitioner was second plaintiff in the suit. On the application, the petitioner was transposed as 13th defendant. According to first respondent, she has released her share in favour of the second respondent/first defendant after receiving money from him and is not interested in conducting the case and not co-operating in conducting the case. After transposed as 13th defendant, petitioner was given number of opportunities to file written statement. She has not filed

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written statement, therefore she was set ex-parte. After letting in evidence, arguments were heard and the suit is pending for more than 3 years in the argument stage. When the suit is about to post for judgment, the petitioner has filed application. A reading of the affidavit filed in support of the said application, it is seen that the petitioner has not given any reason for not filing written statement in time. In the circumstances, the learned Judge considered all the aspects and dismissed the application by giving cogent and valid reason and has rightly exercised his jurisdiction conferred on him and there is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Crl.side)

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Sub Assistant Registrar

To
The Additional District Court,
Dindigul.

am
JS-SV-MMS/10.2.2017/3p-2c

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