



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.260 of 2017(PD)
and
C.M.P(MD) .No.1221 of 2017

1.S. Sridharan
2.S. Paramasivam

... Petitioners/Respondents 1& 2 /
Plaintiffs

Vs

1.P. Arumugam Pillai ... 1st Respondent / Petitioner/ 3rd Defendant

2.The Joint Commissioner,
HR & CE Department,
Tirunelveli.

3.The Assistant Commissioner,
HR & CE Department,
Tuticorin.

4.Shanmuga Sundaram Pillai

5.Subbiah Pillai ... Respondents 2 to 5/ Respondents 3 to 6/
Defendants 1,2,4 & 5

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 15.6.2015 made in I.A.No.704 of 2014 in O.S.No.104 of 2012 on the file of Sub-Court, Tuticorin and allow the Civil Revision Petition.

For Petitioner : Mr. S. Muthalraj

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 15.6.2015 made in I.A.No.704 of 2014 in O.S.No.104 of 2012 passed by the Sub-Court, Tuticorin.

2.The petitioners are the plaintiffs. The respondents are the defendants. The petitioners filed suit in O.S.No.104 of 2012 before the Sub Court, Tuticorin for declaration to declare the order of the third respondent, dated 03.06.2011 providing pathway to one Rajesh and consequential injunction. The defendants did not file written statement and were set ex-parte and ex-parte order was passed on 01.10.2013. The first respondent filed I.A.No.704 of 2014 to set aside the ex-parte order, dated 01.10.2013. According to the first



respondent, he engaged an advocate and handed over the written statement to be filed into Court. The Advocate did not file written statement, therefore, he was set ex-parte. The first respondent was at Chennai during that time and therefore, he could not file written statement on that day.

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3. In the said I.A., the petitioner filed counter affidavit and opposed the said application on the ground that the first respondent has not proved that he was residing at Chennai during that time. The first respondent has made contradictory statement.

4. The learned Judge considering the fact that only an ex-parte order was passed on 01.10.2013 and first respondent has given valid reason for not filing the written statement on 01.10.2013 and has filed written statement along with petition to set aside the ex-parte order, allowed the application on condition that the first respondent pays a sum of Rs.500/- as costs to the petitioner.

5. Aggrieved against the order passed in I.A.No.704 of 2014 by the learned Sub Court, Tuticorin, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioners submitted that the petitioners and defendants 4 & 5 filed a memo, dated 27.09.2012 stating that they had been removed from Trusteeship by the second respondent and Executive Officer has taken charge and they are nothing to do with the suit. Having filed such a memo, which was recorded by the Court, the first respondent is not entitled to file petition to set aside the ex-parte order.

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

8. There is nothing on record to show that the petitioner has taken such a stand before the learned Judge and it is not the case of the petitioners. The learned Judge did not consider the contention raised by the petitioners. The learned counsel for the petitioners contended that the petitioners and defendants 4 & 5 filed a memo, dated 27.09.2012 stating that they had been removed from Trusteeship by second respondent and Executive Officer has taken charge and they are nothing to do with the suit. On the other hand, the petitioners have contended that the first respondent has failed to prove that he was in Chennai during that time on 01.10.2013 and written statement was not filed on that day. The learned Judge considering the fact the first respondent has filed written statement along with petition to set aside the ex-parte decree allowed the application with a view to give an opportunity to the first respondent to put forth his case by awarding Rs.500/- as costs. In the circumstances, there is no illegality or irregularity warranting interference by this Court.



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

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/True copy/

Sd/-

Assistant Registrar (CS II)

Sub Assistant Registrar

To
The Subordinate Judge,
Tuticorin.

Copy to: The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr. S. Muthalraj, Advocate SR.No.7110

am

sm:JM:3.3.2017:3P/4C

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