

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.6402 and 6453 of 2017

COMMON ORDER:

1) C.R.P.No.6402 of 2017 is filed, against the order dated 06.09.2017, passed in I.A.No.612 of 2017 in I.A.No.396 of 2017 in O.S.No.82 of 2001 on the file of the Senior Civil Judge, Amalapuram, wherein an application filed under Order IX Rule 9 and Section 148 and 151 of C.P.C. to set aside the default order dated 03.08.2007 passed in I.A.No.396 of 2017 by extending time to deposit the costs, was dismissed.

2) C.R.P.No.6453 of 2017 is filed, against the order dated 06.09.2017, passed in I.A.No.613 of 2017 in I.A.No.397 of 2017 in O.S.No.82 of 2001 on the file of the Senior Civil Judge, Amalapuram, wherein an application filed under Order IX Rule 9 and Section 148 and 151 of C.P.C. to set aside the default order dated 03.08.2007 passed in I.A.No.397 of 2017 by extending time to deposit the costs, was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India, are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The petitioner herein, filed O.S.No.82 of 2001 seeking partition. Pending suit, the plaintiff filed I.A.Nos.396 and 397 of

2017 to re-open and recall DW.1. The said petitions were allowed on 31.07.2017, on a condition to pay costs of Rs.200/- on or before 03.08.2017, in default the said petitions stand dismissed. On 03.08.2017, there was no representation on behalf of the petitioner and costs were not paid. Hence, the trial Court dismissed both the petitions. Subsequently, on 05.08.2017, the petitioner filed the present applications to set aside the default orders dated 03.08.2017 by extending time for deposit of costs.

5) Defendant Nos.1, 3 to 5 and 8 filed counter, contending that the order dated 31.07.2017 is a conditional order and as per the orders, the petitioner has to pay costs by 03.08.2017. As there was non-compliance of the said order, the petitions were dismissed. Hence pleads that the question of extension of the time stipulated in the order would not arise.

6) After considering the rival submissions made, the trial Court dismissed both the petitions. Challenging the same, the present Civil Revision Petitions are filed.

7) The main ground urged by the learned counsel for the petitioner is that the trial Court ought to have allowed the petitions for re-opening of defendant's side evidence and for recall of D.W.1 for cross-examination. It is stated that without giving permission to cross-examine DW.1, true facts will not come out on record. He further submits that in the interest of justice an opportunity may be given to the petitioner to bring on record the material in support of her case.

8) On the other hand, learned counsel for the respondents while reiterating the contents in the counter filed before the trial Court, opposed the same. According to him, there are no valid and substantial grounds for extending the time. It is further urged that the order being a conditional one, the petitioner ought to have complied with the same within the time fixed. As the petitioner failed to comply with the same, the trial Court rightly rejected her request. He further submits that since the suit is of the year 2001, the question of showing any further indulgence in the matter would not arise.

9) It is true that the suit is of the year 2001, but the request of the petitioner to recall DW.1 was allowed on 31.07.2017, on payment of costs of Rs.200/- and posted the matter to 03.08.2017. It is pleaded that due to personal difficulties, she could not deposit the amount within the time stipulated. Since the suit is for partition and separate possession, cross examination of DW.1, who is the principal witness on behalf of the defendant, is necessary otherwise grave prejudice would be caused.

10) It is the case of the petitioner that by the date of passing of the order she was not doing well and her counsel also fell sick. In view of the above, they could not attend the Court to comply with the conditional order. It is true that there is a delay of four days in filing the present applications. It is also true that proper medical record is not placed on record to show the sickness of her counsel, but this being a partition suit and the matter being

contested from the year 2001, in the interest of justice I feel that it would be just and proper to give one more opportunity to the plaintiff to cross-examine DW.1 by fixing a particular date.

11) Accordingly, both the Civil Revision Petitions are disposed of directing DW.1 to be present before the trial Court on the next date of adjournment and the counsel for the plaintiff shall cross-examine him on the said date. It is needless to mention that at any cost no further adjournments shall be given to the plaintiff for cross-examination of DW.1. The Registry is directed to communicate a copy of the order forthwith to the trial Court.

12) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.12.2017  
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