

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.4606 of 2013

Zakir Hussain

.. Petitioner

..Vs..

1.Ghulsam Bi
2.Khaja Hussain
3.Riaz Hussain

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair order and decretal order of the learned District Munsif-cum-Judicial Magistrate of Parangipettai dismissing I.A.No.10 of 2012 in O.S.No.6/2008 dated 21.06.2013.

For Petitioner :Mr.D.Baskar

For Respondents 1 & 2 :M/s.T.SrinivasaRaghavan Associates

ORDER

The instant revision has been filed challenging the order dated 21.06.2013 dismissing I.A.No.10 of 2012 in O.S.No.6 of 2008 on the file of the learned District Munsif Court cum Judicial Magistrate, Parangipettai.

Brief facts leading to the filing of the revision:

2. The petitioner is the plaintiff and the respondents are the defendants in the suit O.S.No.6 of 2008. The suit was filed for declaration of title as well as for injunction. Trial commenced in the suit and it was posted for continuation of respondents'/defendants' evidence. On the side of the respondents/defendants, DW1 was examined and the case was posted for further evidence on 20.12.2011. Neither the petitioner nor his counsel was present before the Trial Court on 20.12.2011. The suit filed by the petitioner was dismissed for default on that date. I.A.No.10 of 2012 was filed by the petitioner in O.S.No.6 of 2008 to condone the delay of 12 days in filing an application to restore the suit which was dismissed for default on 20.12.2011. A counter was also filed by the respondent in I.A.No.10 of 2012. The Trial Court by its order dated 21.06.2013, dismissing I.A.No.10 of 2012 on the ground that the petitioner/plaintiff had filed an amendment petition when the suit was posted for respondents'/defendants' side evidence and from 01.06.2010 to 01.03.2011, the petitioner/plaintiff has obtained eleven adjournments.

3. Aggrieved by the order of dismissal of I.A.No.10 of 2012, the petitioner/plaintiff has filed this revision.

4. Heard, Mr.D.Baskar, learned counsel for the petitioner and M/s.T.Srinivasa Raghavan Associates, learned counsel appearing for the respondents 1 and 2.

5. This Court has perused and examined the impugned order as well as the affidavit filed in support of I.A.No.10 of 2012. The suit has been filed by the petitioner for declaration of title and for permanent injunction.

6. As seen from the affidavit filed in support of I.A.No.10 of 2012, the petitioner has stated that the evidence on the side of the petitioner who is the plaintiff in the suit was closed long back and the respondents have not been appearing nor have filed any proof affidavit. The petitioner has also stated in his affidavit that earlier he had filed CRP.No.817 of 2011 under Article 227 of the Constitution of India before this Court, in which by order dated 03.02.2011, this Court directed the

Trial Court to dispose of the suit on or before 30.06.2011. According to the petitioner, the Presiding Officer adjourned the matter, even in the absence of respondents as well as their counsel.

7. According to the petitioner, he was constrained to file a transfer petition No.157 of 2011 seeking transfer of the suit to some other Court and the said petition was pending at the time when I.A.No.10 of 2012 was filed. According to him, he was regularly attending the Court and his presence was not necessary on 20.12.2011, when the suit was dismissed for default. Further, he has also stated that the Advocates at Parangipettai have been boycotting the Court making several charges against the presiding officer. He has also stated that 'A' diary was not filled up during that period of time when the suit was dismissed for default on 20.12.2011. Since 'A' diary was not filled up, according to the petitioner, he did not know earlier as to the date when the case was dismissed for default. For the aforementioned reasons, there arose a delay of 12 days in filing an application to restore the suit which was dismissed for default on 20.12.2011.

8. A counter was also filed by the respondents denying the statements made by the petitioner in I.A.No.10 of 2012 and submitting that from 01.06.2010 to 01.03.2011, the petitioner/plaintiff obtained eleven adjournments for carrying out the amendment, pursuant to the allowing of the amendment application filed by the petitioner/plaintiff.

9. Admittedly, on 20.12.2011, the suit was posted only for respondents'/defendants' side evidence and there was no necessity for the petitioner/plaintiff to be present in Court. The Trial Court has not rightly appreciated all these factors before rejecting the application filed by the petitioner/plaintiff to condone the delay of 12 days in filing an application to restore the suit which was dismissed for default. Further the delay is only 12 days and considering the reasons given in the affidavit filed in support of I.A.No.10 of 2012, which is satisfactory, the Trial Court ought to have allowed the said application.

ABDUL QUDDHOSE, J.

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10. In the result, the Order dated 21.06.2013 passed in I.A.No.10 of 2012 in O.S.No.6 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate of Parangipettai is hereby set aside and the Civil Revision Petition is allowed. No costs.

21.12.2018

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

To

The District Munsif-cum-Judicial Magistrate
Parangipettai

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