

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No.4043 of 2017
and
CMP. No.18898 of 2017

Andal

.. Petitioner

Vs

Meenatchi

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.750/2008 in I.A. No.783/2007 in O.S. No.393 /2005 on the file of the Court of the Principal Sub Judge, Puducherry.

For Petitioners :Mr.T.N.Naveen

For Respondent :Mr.G.Rajan

ORDER

This Civil Revision Petition is filed against the order made in I.A.No.750/2008 in I.A. No.783/2007 in O.S. No.393 /2005 on the file of the learned the Principal Sub Judge, Puducherry.

2.The learned counsel for the petitioner would submit that the revision petitioner has filed the suit in O.S. No.393 of 2005 for specific performance and permanent injunction against the respondent. The respondent has filed a written statement in the aforesaid suit on 15.03.2006. Thereafter, since the respondent/defendant has not appeared before the Court below, he was set exparte and exparte decree was passed on 09.08.2007. The respondent has filed an application in I.A. No.783 of 2007 to set aside the exparte decree, however, the said application was dismissed for default. Hence, the respondent has filed an I.A. No.750 of 2008 to condone the delay of 124 of days in filing the restoration petition in I.A. No.783 of 2007. Since, the petitioner has not entered appearance before the Court below, I.A. No.750 of 2008 was also dismissed on 07.04.2011. Thereafter, the petitioner has filed an application in I.A. No.777 of 2011 to set aside the order passed in I.A. No.750 of 2008. The aforesaid application was allowed by the Court below on payment of cost of Rs.500/- by order dated 19.02.2014 and the aforesaid conditional order has been complied by the petitioner. Thereafter, the aforesaid I.A. No.750 of 2008 was restored. After hearing both the parties, the Court below allowed the I.A. No.750 of

2008 by condoning the delay of 124 days in filing the restoration petition. Instead of filing to set aside the petition in I.A.No.783 of 2007, I.A. No.777 of 2011 was filed to restore I.A. No.750 of 2008, in which already the delay was condoned.

3.According to the learned counsel for the petitioner, the Court below mis-understood and mistakenly passed the order. Further, according to the learned counsel for the petitioner, the respondent has filed an application (Unnumbered) to restore the I.A. No.783 of 2007 is also pending. Therefore, the application in I.A. No.783 of 2017 and the unnumbered I.A. to restore the I.A. No.783 of 2007 are still pending before the Court below. Therefore, the order passed by the Court below is liable to be set aside.

4.The learned counsel for the respondent would submit that the application filed by the respondent to restore I.A. No.783 of 2007 is pending, but, the Court below has restored the said I.A. Without considering the said Application, further, the Application in I.A. No.750 of 2008 for condoning the delay of 124 days was condoned.

5. The learned counsel for the respondent would submit that the contention of the petitioner is only on technical ground, therefore, no prejudice would be caused to the petitioner in condoning the delay of 124 days delay in filing to restoration application. The learned counsel for the respondent is not in a position to dispute the said factum submitted by the learned counsel for the petitioner.

6. On perusal of the records, it is clear from the order passed by the Court below, wherein the Court below misunderstood the relief as prayed in the applications filed by the petitioner as well as the application filed by the respondent in the aforesaid suit. When the unnumbered application to restore the I.A. No.783 of 2007 is pending, the delay of 124 days to set aside the ex parte decree, was already condoned by the Court below and the same is unsustainable.

7. On perusal of records reveals that I.A.No.783 of 2007 filed by the defendant to set aside the ex-parte order was dismissed for default on 22.04.2008. Thereafter, the respondent/defendant filed two applications are for restoration of I.A. No.783 of 2007 and another in I.A. No.750 of

2007 to condone the delay in filing the restoration petition. No application was filed in I.A. No.783 of 2007 to restore the said application. The Court below, mis-understood the prayer in the application filed by the parties and allowed the said application. Therefore, the order passed by the Court below is liable to be set aside and opportunity shall be granted to both the parties to present the case before the Court below. Hence, the order passed in I.A. No.750 of 2008 in the aforesaid suit is set aside and remanded to the Court below to decide the applications in I.A. No.750 of 2008 and other connected applications if pending, and dispose of the same, in accordance with law, as expeditiously as possible, preferable within a period of 12 weeks from the date of receipt of a copy of this order.

8. Accordingly, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/ No
Internet : Yes/No
Speaking Order/Non Speaking Order
rkp

D. KRISHNAKUMAR J.,
rkp

To
The learned Principal Subordinate Judge,
Puducherry.



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