

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.607 of 2014 and
M.P.No.1 of 2014

Kannaiyan ... Petitioner

Vs.

Mohamed Sheriff .. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order dated 16.12.2013 made in O.S.No.244 of 1993 on the file of the Principal Subordinate Court, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.R.Bakayaraj

ORDER

The Civil Revision Petition is filed against the docket order dated 16.12.2013 made in O.S.No.244 of 1993 on the file of the Principal Subordinate Court, Villupuram.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.244 of 1993 on the file of the Principal Subordinate Court, Villupuram. The respondent filed the said suit for recovery of a sum of Rs.1,29,036/-. The respondent filed written statement. The trial commenced, proof affidavit and documents were marked. P.W.1 was cross-examined in part and subsequently, the counsel for the petitioner did not cross-examine P.W.1 and the suit was decreed exparte. The petitioner filed an application to set aside the exparte decree and the said application was allowed and exparte decree was set aside. The counsel for the petitioner contended that the respondent must let in fresh evidence and cannot rely on the evidence already let in. On the other hand, the learned counsel for the respondent contended that the suit was decreed exparte as the counsel for the petitioner did not cross-examine P.W.1 further. Once exparte decree is set aside, the suit must be proceeded from the stage, when the exparte decree was passed.

3. The learned Judge considering the arguments of the learned counsel for the parties and judgment relied on by the counsel for the respondent, by order dated 16.12.2013 held that the suit has to be proceeded from the stage of further cross-

examination of P.W.1 and not from the stage of chief examination of P.W.1 and posted the suit to 20.12.2013.

4. Against the said order dated 16.12.2013 made in O.S.No.244 of 1993, the present Civil Revision Petition is filed by the petitioner.

5. The learned counsel for the petitioner contended that once exparte decree is set aside, evidence let in by the plaintiff is also set aside. The respondent has to let in chief examination again. In support of his contentions, he has relied on the following two judgments:

(i) **1982 (1) MLJ 126 (M.Govindaswami Pillai v. C.T.Balasubramania Thevar);**

"7. Now, we have to consider whether in a case where some evidence is recorded and then the suit is dismissed for default, and then restored, the evidence recorded becomes non est, just as the exparte evidence is held to be non est after the exparte decree is set aside. In my view there

cannot be one rule in respect of matters where an ex parte decree is set aside and another rule in respect of a suit dismissed for default and once again restored to file. Just as in the case of setting aside the ex parte decree, the prior proceedings becomes non est similarly when a suit is dismissed for default and once again restored to file, the proceedings prior to the restoration also become non est.”

(ii) **1979 (2) MLJ 86 (M.S.Mani v. K.N.Velayudham Chettiar);**

“3. In *Eswaramurthi v. Ramakrishna, N.S.Ramaswami, J.*, considered a somewhat similar question. In that case also, there was an ex parte decree and before passing the ex parte decree, some evidence had also been recorded. After referring to certain decisions, the learned Judge observed as follows:

“ All these decisions proceed on the footing that the ex parte evidence should be treated as non est once the ex parte decree is set aside. I respectfully agree with that view. If the ex parte decree is set aside, the parties would be in the same position as they were before recording of

exparte evidence. If the suit is settled out of Court after the exparte decree is set aside, such settlement is clearly before 'any evidence has been recorded', for the exparte evidence originally recorded had been wiped out, as it were, by the setting aside of the proceeding. "

6. Per contra, the learned counsel for the respondent contended that once exparte decree is set aside, the suit is restored to the stage when exparte decree was passed. In the present case, exparte decree was passed as the learned counsel for the petitioner failed to cross-examine P.W.1 further. The suit has been filed in the year 1993 for recovery of money. The petitioner has come out with the present Civil Revision Petition only to drag on the proceedings.

7. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the trial commenced, respondent was examined as P.W.1, marked documents and he was cross-examined partly by the counsel for the petitioner. Subsequently, counsel for the petitioner did not cross-

examine P.W.1 and the petitioner was set exparte and exparte decree was passed. When the said exparte decree was set aside, the suit was posted for further cross-examination of P.W.1. Once an exparte decree is set aside, it amounts to that the suit is pending without any interruption and the suit has to be proceeded after setting aside the exparte decree from the stage when exparte decree was passed. In the present case, P.W.1 was partly cross-examined and exparte decree was passed for not cross-examining P.W.1 further by the counsel for the petitioner. In view of the fact that the learned counsel for the petitioner cross-examined the P.W.1 in part, the decisions relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

9. In view of the above fact, after setting aside the exparte decree, the suit has to be proceeded from the stage of further cross-examination of P.W.1 only. By setting aside the exparte decree, earlier evidence recorded is not eschewed. The learned Judge has correctly appreciated the fact and posted the suit for further cross-examination of P.W.1. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 16.12.2013.

10. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 1993, the learned Judge is directed to dispose of the suit in O.S.No.244 of 1993 on day-to-day basis and in any event not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

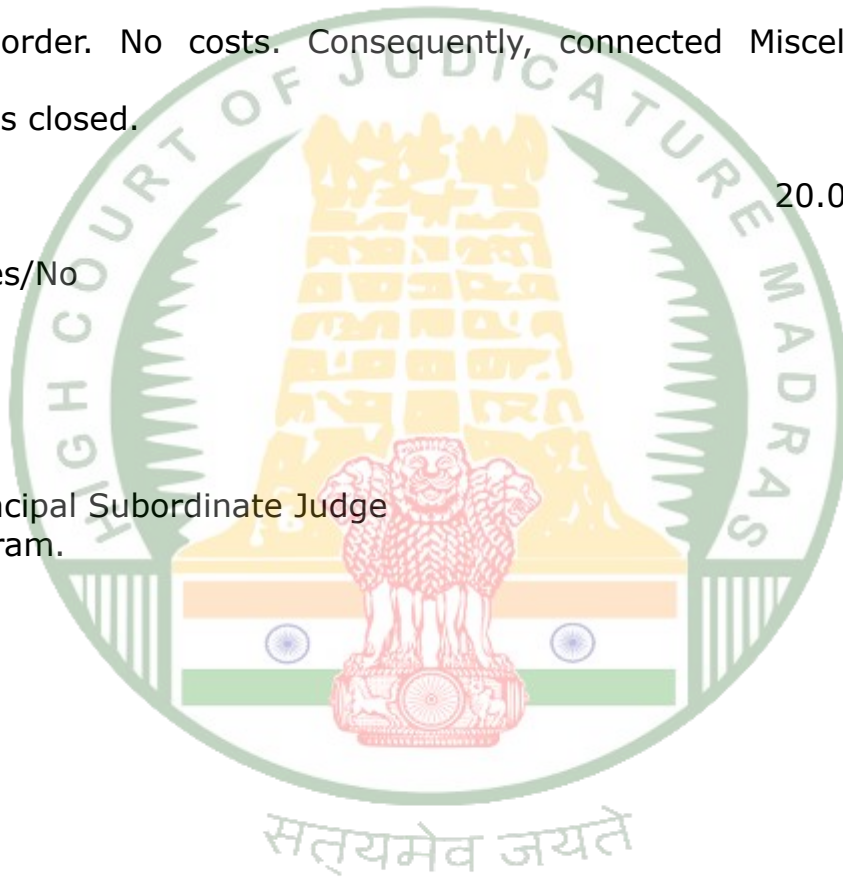
20.02.2018

Index:Yes/No

kj

To

The Principal Subordinate Judge
Villupuram.



WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(PD)No.607 of 2014 and
M.P.No.1 of 2014

20.02.2018

WEB COPY