



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

WEB COPY

C.R.P.(MD)No.537 of 2018 and
CMP(MD).Nos.4140 and 4141 and 2348 of 2018

X.Mercy Helan Fathima : Petitioner/Petitioner
-Vs-
R.Sivakumar : Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records pertaining to the order passed in I.A.No. 380 of 2017 in O.S.No.337 of 2017, dated 20.11.2017 on the file of the Principal Sub Court, Dindigul and set aside the same.

For Petitioner : Mr.A.Arul Jenifer
For respondent : Mr.M.S.Suresh Kumar

O R D E R

This Civil Revision Petition has been filed to call for the records pertaining to the order passed in I.A.No. 380 of 2017 in O.S.No.337 of 2017, dated 20.11.2017 on the file of the Principal Sub Court, Dindigul and set aside the same.

2. Challenging the order passed in I.A.No.380 of 2017 in O.S.No.337 of 2017, dated 20.11.2017, by the learned Principal Subordinate Judge, Dindigul, the revision petitioner, who is the defendant has filed the present Civil Revision Petition. The respondent, plaintiff has filed an Interlocutory Application in I.A.No. 380 of 2017, under Order 38 Rule 5 and Section 151 CPC before the Court below for attachment before Judgment for furnishing Security for the suit amount or otherwise confirm the attachment of the petition mentioned property.

3. It is the case of the petitioner that on the said date viz., 20.11.2017 the counsel for the petitioner, defendant has not appeared before the Court below, but, his name was printed.

4. It is the case of the respondent, plaintiff that the petitioner / defendant was present before the Court below and in his presence only, the order has been passed.

5. Therefore, this Court by order dated, 14.06.2018 called for explanation from the learned Principal District Judge, Dindigul as to whether the defendant's counsel viz., Mr.A.Murugesan and Mr.P.Rajarajan, were appeared on that date or not in I.A.No.380 of



2017, dated 20.11.2017. The learned Judge by its letter dated, 18.06.2018 submitted his explanation. The relevant portion reads as follows:

"I humbly submit that on receipt of the order, I perused the records, in Suit (O.S.No.337 of 2017) and as well as in I.A.NO. 380 of 2017. On 20.11.2017, there is no endorsement in the notes paper, whether the counsels on record for the defendant / respondent were present or not.

I humbly submit that inadvertently, though the defendant was set ex parte in suit as well in I.A.No.380 of 2017, in fair and decreetal order, it has been typed that in the presence of Advocates of respondent / defendant, the order was passed."

6. In view of the above, without going into the dispute, whether the counsel has appeared or not, I am inclined to pass the following order:

(i) This Civil Revision Petition is allowed by setting aside the order passed by the learned Principal Sub Judge, Dindigul made in I.A.No. 380 of 2017 in O.S.No.337 of 2017, dated 20.11.2017.

(ii) The Trial Court is directed to dispose of the I.A.No.380 of 2017 in O.S.No.337 of 2017, within a period of 15 days from the date of receipt of a copy of this order.

(iii) Simultaneously, the Trial Court is directed to proceed with the suit in O.S.No. 337 of 2017 and dispose of the same within a period of two months, without giving any adjournment to either parties.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Principal Sub Judge, Dindigul.

+1cc to M/S.A.Arul Jenifer, Advocate SR.No. 69468
+1cc to M/S.M.S.Suresh Kumar, Advocate SR.No. 69092

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