



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) .No.1085 of 2018

and

C.M.P. (MD) No.4722 of 2018

S.Ganeshan ...Petitioner/Petitioner/1st defendant

Vs.

1.Sumathi ...Respondent/1st Respondent/Plaintiff

2.N.Ezhil

3.Vijaya

4.S.Palanimurugan

5.Sanmuga Sundara Pandian ...Respondents/Respondents 2 to 5/
Defendants 2 to 5

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the order and decreetal order, dated 11.04.2018 in I.A.No.302 of 2018 in O.S.No.43 of 2012 on the file of the Subordinate Court, Valliyoor, Tirunelveli District and set aside the same by allowing the Civil Revision Petition.

For Petitioner : Mr.K.Sudalaiyandi

For R1/Caveator : Mr.P.Ronald

ORDER

This Civil Revision Petition has been filed as against the order, dated 11.04.2018 passed in I.A.No.302 of 2018 in O.S.No.43 of 2012 by the Subordinate Judge, Valliyoor, Tirunelveli District.

2.Heard the learned counsel for the petitioner and the learned counsel for the first respondent/caveator.

3.The petitioner, who is the first defendant in O.S.No.43 of 2012 pending on the file of the Subordinate Court, Valliyoor,



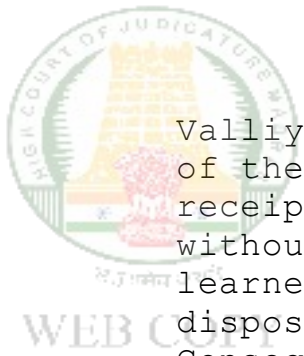
Tirunelveli District, was set exparte on 30.08.2012, due to his non appearance. Hence, the petitioner/first defendant filed an application in I.A.No.302 of 2018 in O.S.No.43 of 2012 seeking to set aside the order dated 30.08.2012, which was filed in the year 2012, i.e. after five years. The learned Subordinate Judge, Valliyoor dismissed the said application on 11.04.2018. Challenging the said order, the present Civil Revision Petition has been filed.

4.The learned counsel for the first respondent/plaintiff has vehemently opposed to allow this Civil Revision Petition on the ground that the petitioner was initially set exparte on 03.08.2012 and subsequently, the defendants 4 and 5 filed application in I.A.No.1091 of 2017 seeking to examine the petitioner/first defendant as an witness on their side and the said application was dismissed on 24.01.2018. Thereafter, on the instigation of the other defendants, the petitioner/first defendant has filed this Civil Revision Petition, after a period of five years. Apart from this, the learned counsel for the first respondent/plaintiff has also stated that now the entire witnesses have been examined on the side of the petitioner/first defendant and that the suit is posted for further evidence of the other defendants.

5.It is an admitted fact that for filing of the application under Order 9 Rule 7, there is no necessity for filing condone delay petition. But the petitioner has kept quiet for more than five years without filing any application to set aside the said exparte order. Though the petitioner was set exparte, no exparte decree was passed against the petitioner. Apart from this, the suit is posted only for further evidence of the other defendants and therefore, nothing prejudice would be caused to the first respondent/plaintiff, in allowing this Civil Revision Petition.

6.Considering the above facts and circumstances of the case, I am of the view that, since the petitioner/first defendant has filed this Revision, after five years, he has to compensate to the first respondent/plaintiff by way of money. Therefore, I am inclined to pass the following order:-

"This Civil Revision Petition is allowed by setting aside the order passed in I.A.No.302 of 2018 in O.S.No.43 of 2012 on condition that the petitioner shall pay a sum of Rs.30,000/- (Rupees Thirty Thousand Only) to the first respondent/plaintiff, within a period of one week from the date of receipt of a copy of this order and on production of the payment receipt before the learned Subordinate Judge, Valliyoor, Tirunelveli District, within the time prescribed by this Court, the learned Judge is directed to permit the petitioner/first defendant, to put forth his case by filing necessary documents. The learned Subordinate Judge,



Valliyoora, Tirunelveli District, is also directed to dispose of the suit, within a period of two months, from the date of receipt of a copy of this order, on day-to-day basis, without giving any adjournment to either parties and the learned Judge shall file a report before this Court, after disposal of the suit, within ten days thereafter. Consequently, connected Miscellaneous Petition is closed."

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Valliyoora, Tirunelveli District.

+ 1 cc TO Mr.K.Sudalaiyandi , Advocate in SR No. 66890

ls/rj2

AE/SV MMS/SAR4/25.06.2018/3P/3C

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