



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 02.08.2018
DELIVERED ON: 17.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1478 of 2018

and

CMP (MD) No.6387 of 2018

Rajaraja Cholan

... Petitioner

vs

1.Karupaiaammal

2.Paulsamy

3.Mariappan

4.K.Murugan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Order and Decree made in I.A.No.53 of 2017 in I.A.No.363 of 2012 in O.S.No.227 of 2011 dated 31.08.2017 on the file of the Sub-Court, Srivilliputtur.

For Petitioner : Mr.M.Thirunavukkarasu

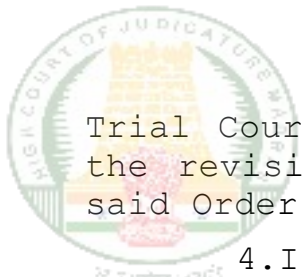
For Respondents Mr.M.Solaisamy (for R1)
: Mr.T.Thangamani (for R2 & R3)
No Appearance (for R4)

ORDER

The plaintiff in O.S.No.227 of 2011 on the file of the learned Sub-Court, Srivilliputhur is the revision petitioner. The said suit was for Specific Performance and Permanent Injunction. In the suit, 1st Respondent / 3rd Defendant remained absent and set Ex-parte for non filling of written statement on 03.02.2012.

2.To set aside the said Ex-parte order, the 1st Respondent herein filed an application in I.A.No.363 of 2012 accompanied with her Written Statement. Her application to set aside the Ex-parte Order was allowed by a conditional order to pay cost of Rs.150/- to the petitioner herein on or before 28.11.2012 by the Trial Court vide its order dated 02.11.2012. Whereas the 1st Respondent failed to pay cost imposed on him, accordingly I.A.No.363 of 2012 came to be dismissed on 29.11.2012 by the Trial Court.

3.In the said factual background, in the year 2017 the 1st respondent all of a sudden, filed an interlocutory application in I.A.No.53 of 2017 to restore I.A.No.363 of 2012 to its file by condoning the delay of 1147 days. Despite serious objection, the 1st respondent's application was allowed on 24.08.2017 by the



Trial Court by imposing a condition to pay cost of Rs.3,500/- to the revision petitioner on or before 30.08.2017. Challenging the said Order the present Civil Revision Petition.

4.I heard Mr.M.Thirunavukkarasu, learned counsel for the petitioner, Mr.M.Solaisamy, learned counsel for the 1st respondent and Mr.T.Thangamani, learned counsel for the 2nd respondent and perused the entire materials available on record. No representation on behalf of the 4th respondent.

5.The learned counsel for the petitioner would submit that the Interlocutory Application on hand neither filed under Section 148 of C.P.C. for Enlargement of time nor challenging the earlier order of dismissal due to the failure to pay the cost cannot be entertained.

6.It is his further contention that the earlier Order of dismissal dated 29.11.2012 could be challenged only by way of Revision or CMA based on the nature of such order. The trial Court dealt with the respondent's application as though it was for restoration of case dismissed for non prosecution or non appearance.

7.Per contra, the learned counsel for the 1st respondent would submit that the 1st respondent being a woman, besides an Illiterate was not in a position to communicate with her counsel before the Trial Court. Hence she was powerless to pay the cost in time. Again she was not communicated by her earlier counsel with regard to imposition of cost and consequential allowing of her application to set aside the Ex-parte order. Once received the knowledge of the dismissal, she has engaged a new counsel and came up with the present I.A.No.53 of 2017 in I.A.No.363 of 2012 for setting aside the Ex-parte Order.

8.On perusal of case records, it is seen that the 1st respondent was Set Ex-parte for non appearance in the above Suit. Accordingly under Order 9, Rule 7 C.P.C. she made an application and as on date the Trial had not yet commenced.

9.In view of the above, I am of the considered opinion that since Trial has not commenced in the instant suit, there would be no substantial loss to the revision petitioner, other than towards delay incurred, if order of Ex-parte of 1st respondent is set aside.

10.This Court at the same time, notice the cost of Rs.3,500/- imposed on the 1st respondent as meager towards 1147 days delay in filing I.A.No. 53 of 2017 in I.A.No.363 of 2012.

11.In the result:

(a) the Civil Revision Petition fails and the same is hereby dismissed, yet enhancing the cost imposed by trial Court from Rs.3,500/ to Rs.10,000/-;



(b) the 1st respondent shall pay the indicated cost of Rs.10,000/- to the revision petitioner through his counsel before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and a Memo shall be filed before the Trial Court to that effect;

(c) the 1st respondent shall be entitled to deduct a sum of Rs.3,500/- if any already paid in line with the Impugned Order dated 24.08.2017. As the suit is of the year 2011, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Sub Judge, Srivilliputtur.

+1cc to Mr.M.Thirunavukkarasu, Advocate Sr.No.84589

+1cc to Mr.M.Solaisamy, Advocate Sr.No.85009

+1cc to Mr.N.Bala Subramanian, Advocate Sr.No.85250

VSV

VB/PM/SAR1/04.10.2018/3P/5C

order made in
C.R.P. (MD) (PD) No.1478 of 2018
and
CMP (MD) No.6387 of 2018
17.09.2018