



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 04.12.2017
DELIVERED ON : 29.01.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2631 of 2016
and
C.M.P. (MD) No.12364 of 2016

1. Adarsh Educational Trust,
Rep. by its Chairman,
Gopal Surendran,
Adarsh Vidya Kendra,
Vettoornimadam, Nagercoil,
Kanyakumari District.

2. The Secretary,
Adarsh Educational Trust,
Adarsh Vidya Kendra,
Vettoornimadam, Nagercoil,
Kanyakumari District.

3. Treasurer,
Adarsh Educational Trust,
Adarsh Vidya Kendra,
Vettoornimadam, Nagercoil,
Kanyakumari District.

: Petitioners/Respondents/Plaintiffs

vs.

1. The Chairman,
Bank of Baroda,
C.26 - G.Block,
Bandra Kurla Complex,
Mumbai - 400 051.

2. The Regional Manager,
Regional Office,
Bank of Baroda,
III Floor, 82 Bank Road,
Coimbatore - 641 018.

3. The Manager,
Bank of Baroda,
D.D.J. Complex,
Vadasery,
Nagercoil - 629 001.

: Respondents/Petitioners/Defendants



17.10.2016 in I.A.No.233 of 2015 in O.S.No.230 of 2014 on the file of the First Additional District Munsif Court, Nagercoil.

For Petitioners : Mr.K.S.Chellapandian,
Senior Counsel
for Mr.V.M.Balamohan Thambi

For Respondents : No appearance for R.1 & R.2
Mr.A.Thiyagarajan for R.3

ORDER

This Civil Revision Petition has been filed against the order and decree passed by the learned I Additional District Munsif, Nagercoil, in I.A.No.233 of 2015 in O.S.No.230 of 2014 dated 17.10.2016.

2. The facts of the case, in nutshell, are as follows:

2.1. The petitioners herein have instituted a suit in O.S.No.230 of 2014, against the respondents herein seeking mandatory injunction and other reliefs. During the course of trial, the defendants/respondents herein were directed to file their written statements and as they have failed to do so, an ex-parte order was passed on 26.03.2015. Aggrieved over the same, the respondents herein have filed an interlocutory application in I.A.No.233 of 2015 seeking to set aside the ex-parte order and the lower Court, after hearing both the sides, had allowed the petition, on payment of Rs.1,000/- to the District Legal Service Authority, Kanyakumari at Nagercoil. Aggrieved thereby, the plaintiffs have preferred the present civil revision petition.

3. The learned Counsel for the petitioners/plaintiffs would strongly contest that the trial Court ought not to have allowed the said interlocutory application, but, had allowed and agreed to receive the written statements. It is pertinent to note that the respondents/defendants have not filed their written statements within 90 days from the date of service of summons and therefore, he prays for setting aside the impugned order dated 17.10.2016.

4. On the other hand, the learned Counsel for the third respondent/third defendant would submit that he had prepared the written statements and had sent the same to the first respondent/first defendant, for getting his signature. As the same was not reached on time, he was not able to submit the written statements before the trial Court on the said date, therefore, in his presence, an ex-parte order was passed by the lower Court. Thereafter, he has filed the interlocutory application, seeking to



set aside the ex-parte order, narrating all the facts along with a copy of the written statements and the trial Court, after a careful study, in the interest of justice, has allowed the petition with costs. Therefore, he prays for dismissing the present revision petition.

5. Heard the learned Counsel appearing for the petitioners and the third respondent and perused the documents placed on record. There was no representation for the respondents 1 & 2, despite notice was served on them.

6. A perusal of records would show that the point to be dealt with is whether it is legally permissible to allow the defendants to file their written statements, even after 90 days from the date of service of summons.

7. Admittedly, the defendants have failed to file their written statements on time. But, in their interlocutory application seeking to set aside the ex-parte order, to prove their *bona fide* and to prove that they are also interested in early disposal of the suit proceedings, they have enclosed a copy of the written statements.

8. The Hon'ble High Court, in the case of ***U.Chandraprakasam and others vs. S.Krishnan and others, in C.R.P(PD)No.1420 of 2005, decided on 13.04.2009***, reported in ***2009 (3) CTC 371***, has held as follows:

"...13. It is also to be noted that though the power of the Court under the Proviso appended to Rule 1 of Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form."

9. Considering the fact that the above cited judgment squarely applies to the present case on hand, this Court is of the view that opportunity should be given to the defendants in establishing their case, on merits and therefore, the learned trial Judge is right, in allowing the said interlocutory application with a cost of Rs.1,000/-, payable to the District Legal Services Authority, Kanyakumari at Nagercoil.



10. In result, this civil revision petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif,
Kanyakumari at Nagercoil.

+1cc to Mr.V.M.Balamohan Thambi, Advocate Sr.No.44892

GK

VB/JC/SAR2/15.02.2018/4P/3C

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and**

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