

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) 3942 and 3943 of 2010
and M.P.No.1 of 2010

J.Balasundaram Petitioner in both the CRP

Vs.

R.Balusamy ... Respondent in both the CRP

PRAYER in CRP(NPD) No.3942 of 2010: Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 09.08.2010 passed in I.A.No.576 of 2009 in I.A.No.656 of 2006 in O.S.No.657 of 2004 by the Principal Subordinate Judge, Coimbatore.

PRAYER in CRP(NPD) No.3943 of 2010: Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 09.08.2010 passed in I.A.No.609 of 2009 in I.A.No.656 of 2006 in O.S.No.657 of 2004 by the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.R.Sankaranarayanan

COMMON ORDER

The civil revision petition in CRP No.3942 of 2010 is filed against the fair and decreetal orders passed in I.A.No. I.A.No.576 of 2009 in I.A.No.656 of 2006 in O.S.No.657 of 2004 dated 09.08.2010 by the Principal Subordinate Judge, Coimbatore.

The civil revision petition in CRP No.3943 of 2010 is filed against the fair and decreetal order dated 09.08.2010 passed in I.A.No.609 of 2009 in I.A.No.656 of 2006 in O.S.No.657 of 2004 by the Principal Subordinate Judge, Coimbatore.

2. The civil revision petitioner is the defendant in O.S.No.657 of 2004 on the file of the Subordinate Judge, Coimbatore. The respondent/ plaintiff filed the suit for specific performance of the contract and the suit was decreed exparte on 24.01.2006. The civil revision petitioner filed a petition unde Order IX Rule 13 read with Section 151 of the Code of Civil Procedure in I.A.No.656 of 2006 for setting aside the exparte decree passed against him in O.S.No.657 of 2004.

3. The learned Subordinate Judge, Coimbatore allowed the said application on payment of costs of Rs.1,000/-. Since the defendant did not pay the costs to the respondent, the petition in I.A.No.656 of 2006 was dismissed on 21.03.2007. Subsequently, he filed I.A.No.576 of 2009 under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure to restore the application in I.A.No.656 of 2006. He also filed I.A.No.609 of 2009 under Sections 148 and 151 of the Code of Civil Procedure to extend the time for payment of costs in I.A.No.656 of 2006. The learned Subordinate Judge, dismissed the petition in I.A.No.609 of 2009 on the ground that the petitioner did not show sufficient cause for extension of time to pay costs of Rs.1,000/- to the plaintiff and also dismissed the petition in I.A.No.576 of 2009 on the ground that the petition in I.A.No.609 of 2009 was dismissed.

4. Mr. C.R.Prasannan, learned counsel appearing for the civil revision petitioner relied on the decision in ***A.J.Chandrasekar Vs. N.Masilamani and others reported in 2019(2) MWN (civil) 44***, and contended that the learned Subordinate Judge, Coimbatore did not render a finding on the issues framed by him and therefore, the exparte decree passed by him is liable to be dismissed. He also relied on the decision in ***Mahanth Ram Das Vs. Ganga Das reported in AIR 1961 (3) SCR 763*** and

contended that though the trial court was clothed with ample power to do justice to a litigant under Section 148 and 149 of the Code of Civil Procedure, the trial court had unfortunately dismissed the petition under Section 148 of the Code of Civil Procedure filed by the defendant in I.A.No.609 of 2009.

5. Reliance was also placed upon the decision in ***Ramanath Mishra Vs. Ganeswar Mishra and others*** reported in AIR 1986 Orissa 26, wherein, at paragraph No.4, it has been held thus.

" The main question for consideration is whether the court below was justified in holding that the petition under Section 151 of the Code of Civil Procedure for recalling the order dated 20.07.1981 dismissing the petition under Order IX Rule 13 of the Code of Civil Procedure for petitioner's default in payment of costs to the opposite party No.1 was not maintainable. As mentioned earlier, a previous attempt by the petitioner seeking the court's permission to deposit the costs on 21.07.1981 was also refused on the ground of non-maintainability. The said application was filed under Section 148 of

CPC read with Section 151 of CPC expressly provides "Where any period is fixed or granted by the court for doing of any act prescribed or allowed by the code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Order IX, Rule 13, CPC empowers the court which passed the decree ex parte against the defendant to set aside the said decree if satisfied about the existence of the conditions mentioned in the provision, upon such terms as to costs, payment into court or otherwise as it thinks fit. Thus the direction of the court to the petitioner to pay a sum of Rs.100/- towards costs to the opposite party No.1 by 15.07.1981 comes within the terms "for doing of any act prescribed or allowed by party No.1 by 15.07.1981 comes within the terms 'for doing of any act prescribed by this code in S.148. Thus, there can be little doubt that Section 148 of CPC was applicable to the application filed by the petitioner on 21.07.1981 to enlarge the time for payment of

costs. Further, the position has to be accepted as well established that even if the direction to pay the costs as a condition for setting aside the exparte decree does not strictly come within the purview of CPC, still the court has ample jurisdiction under Section 151 of the Code of enlarge the time in an appropriate case. This view gains support from the decisions reported in AIR 1961 SC 882 (Mahanth Ramdas V. Ganga Das) and (1982) 53 Cut LT 87 :(AIR 1982 Orissa 75) (Narasingha Charan LSwain V. Jairam Jena). As such, the trial court erred in rejectiing the application dated 21.07.1981 under Section 148 read with Section 151, CPC filed by the petitioner as not maintainable."

सत्यमेव जयते

6. He would further contend that though the revision petitioner had shown sufficient cause for extention of time for payment of costs of Rs.1,000/- in I.A.No.609 of 2009 filed under Section 148 and 151 of CPC , the same was not considered by the trial court and ultimately the petition was dismissed. His further contention is that the petition in I.A.No.576 of 2009 under Order IX rule 9 read with Section 151 of CPC was

also dismissed, on the ground that since I.A.No.609 of 2009 seeking extension of time for payment of costs is dismissed, no purpose would be served by retstoring the I.A.No.656 of 2006.

7. At this juncture, it is relevant to point out that the respondent/ plaintiff had filed the main suit for specific performance of contract entered into between him and the revision petitioner. Since the revision petitioner did not appear before the Subordinate Judge, Coimbatore, the suit was decreed exparte.

8. A perusal of the written statement filed by the revision petitioner/ defendant shows that he denied the execution of the sale agreement dated 16.02.2004. Therefore, there are some arguable points in O.S.No.657 of 2004. It is also pertinent to note down that the Subordinate Judge, Coimbatore in fact allowed the application in I.A.No.656 of 2006 filed under Order IX Rule 13 of the Code of Civil Procedure on 24.01.2006 on payment of costs of Rs.1,000/-. Subsequently, the said petition was dismissed for non payment of costs, within the date stipulated by the court. Even though the revision petitioner filed a petition in I.A.No.609 of 2009 praying to extend the time for payment of costs, the said petition was also dismissed, without considering the various contentions raised by the

revision petitioner.

9. A conjoint reading of Section 148, 149 and 151 of the Code of Civil Procedure makes it clear that the court has power to extend time beyond the stipulated time, when sufficient cause exists or events pointed out to the court for non compliance are beyond the control of the party, as the object of the Code is not to permit the failure of justice.

10. The Subordinate Judge, Coimbatore had further observed in I.A.No.609 of 2009 that though the revision petitioner entered appearance in E.P.No.264 of 2008 on 16.07.2009, he did not file a petition for extension of time immediately and on the other hand, the petition was filed only in October 2009.

11. It is true that the revision petitioner was not diligent in prosecuting the case. However, in the facts and circumstances of the case, this court is of the view that an opportunity should be given to the revision petitioner to contest the suit in O.S.No.657 of 2004, especially when the trial court has not passed the judgment after answering all the issues. It is to be borne in mind that in a suit for specific performance, the plaintiff has to plead his readiness and willingness to perform his part of the contract

and the court has to scrutinise the facts as set out under Order VIII Rule 10 of the Code of Civil Procedure and also as to whether all the requirements contained in Section 16 of the Specific Relief Act have been complied with or not.

12. In the instant case, the defendant has filed his written statement contending that he did not execute the sale agreement as alleged by the plaintiff. Therefore, in the facts and circumstances of the present case, I hold that the order passed in I.A.No.576 of 2009 and I.A.No.609 of 2009 are liable to be set aside and the civil revision petitions are liable to be allowed.

13. In the result,

(i) The civil revision petition in CRP No.3942/2010 and 3943/2010 are allowed. No costs. The connected miscellaneous petition is closed.

(ii) The revision petitioner/defendant is directed to appear before the Subordinate Judge, Coimbatore and pay the costs of Rs.1,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order.

(iii) On compliance thereof, the exparte decree dated 24.01.2006 passed in O.S.No.657 of 2004 shall be set aside and the Subordinate Judge, Coimbatore is directed to dispose of the case, within a period of 6 months from the date of receipt of a copy of this order, after afording sufficient opportunities to both the parties.

05.08.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

1. The Subordinate Judge, Coimbatore.



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R.HEMALATHA,J.
mst



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M.P.No.1 of 2010

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