

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.2203 of 2013

and

M.P.No.1 of 2013

Rasu Asari

Petitioner

Vs

Mrs.Chandra

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 18.02.2013 passed in I.A.No.977 of 2012 in O.S.No.450 of 2010, on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : M/s.G.Ramadurai

For Respondent : Mr.N. Suresh

ORDER

Aggrieved over the order dated 18.02.2013 passed in I.A.No.977 of 2012 in O.S.No.450 of 2010 on the file of Principal District Munsif Court, Villupuram, the petitioner who is the defendant in the above referred suit has filed this Civil Revision Petition seeking the relief to set aside the order dated 18.02.2013 passed in IA No.977 of 2012.

2. Before the trial Court, the respondent in this Civil Revision Petition has filed a suit as against the petitioner, seeking the relief of declaration and injunction. After receiving the written statement from the defendant / petitioner, on 15.11.2011, when the suit is posted for trial, the respondent has not appeared before the trial Court. Hence, the learned Principal District Munsif, Villupuram has dismissed the suit. Subsequent to the dismissal order, the respondent herein has filed an application to condone the delay of 237 days in filing the application under Order 9 Rule 9 of Civil Procedure Code to restore the suit. The learned Principal District Munsif, Villupuram after affording opportunity to the petitioner, by an order dated 18.02.2013, had allowed the application filed by the respondent with a condition that the respondent has to pay a cost of Rs.600/- to the petitioner herein.

3. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition with a prayer to set aside the order dated 18.02.2013. In this occasion, it is necessary to see the affidavit filed by the respondent before the trial Court in support of the petition filed to condone the delay in filing the application. In the affidavit, she has stated that on 15.11.2011, when the case was posted for enquiry, she was suffering from diarrhea and taking treatment from the country doctor. Only in the said circumstances, she could not contact her counsel, who is on record on behalf of her and give instructions. According to her, the absence on 15.11.2011, before the trial Court is neither wilful nor

wanton. Hence, she prays to set aside the order passed in IA No.977 of 2012.

4. On the other hand, resisting the claim made by the petitioner/respondent, the petitioner herein has filed a counter and states that subsequent to the dismissal order in OS No.450 of 2010, due to the trouble given to the petitioner herein, he was forced to file a suit in OS No.295 of 2012, for the relief of declaration and consequential injunction against the respondent herein and others, before the Court in which the suit filed by the respondent was disposed of. According to her, the petitioner has filed the petition with false affidavit in order to defeat his suit. Hence, interference of this Court is not necessary in the impugned order passed by the learned Principal District Munsif, Villupuram.

5. In this occasion, on going through the impugned order passed by the learned Principal District Munsif, Villupuram, it was held that since the suit was filed for the relief of declaration and injunction, opportunity must be given to the respondent for contesting the case and thereby restoring the suit is necessary. In the said circumstances, the learned counsel appearing for the petitioner would contend that without any specific reason, the learned Principal District Munsif, Villupuram had allowed the petition filed by the petitioner. On the other hand, the learned counsel appearing for the respondent would contend that only for giving

yet another opportunity, the learned trial court had allowed the application filed by the respondent.

6. Now on going through the reasons stated in the affidavit filed by the petitioner, it is to be noted that only because of the reason the respondent was not appeared before the trial court on the date of trial, the suit was dismissed. However, in order to substantiate the claim made by the respondent, she has not produced any relevant document. Further, since the suit is filed for the relief of declaration, it is necessary for the trial Court to determine the right having by the respondent in the suit schedule property. At this juncture, this Court has relied upon the judgment of our Honourable Apex court reported in 2019 (7) SCC 359, which reads as follows:-

7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

So, applying the said principle in this case also, it is necessary for the trial Court to determine the right of parties. Mere dismissal for default is not a way to settle the dispute having by the parties.

7. In the impugned order, the learned Principal District Munsif has fairly hold that only for giving another opportunity, the petition filed by the respondent was allowed on payment of cost. Hence, in my considered view, I do not find any irregularity or illegality in the impugned order passed by the learned Principal District Munsif, Villupuram. Further it is pertinent to note that the delay required to be condoned is only eight months. Hence, it is justifiable and reasonable to confirm the order passed by the learned Principal District Munsif, Villupuram with some enhanced cost.

8. In the light of the above discussions, the Civil Revision Petition is dismissed. The respondent herein is directed to pay a cost of Rs.3,000/- to the petitioners, after deducting the amount, if any already paid by her, within two weeks from the date of receipt of copy of this order. On payment of such cost, the learned trial judge is directed to dispose of the suit in O.S.No.450 of 2010, as early as possible preferably within a period of four months. No costs. Consequently, connected miscellaneous Petition is closed.

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To

The Principal District Munsif Court, Villupuram.

R.PONGIAPPAN, J.,

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