

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM

THE HONOURABLE MRS.JUSTICE **P.T.ASHA**

C.R.P.No.2736 of 2018

and

C.M.P.No.16073 of 2018

V.Krishnan

... Petitioner / plaintiff

Vs.

Mrs.Vimala

... Respondent / defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 01.08.2018 in I.A.No.308 of 2018 in O.S.No.37 of 2008 by the District Munsif-cum-Judicial Magistrate, Uthiramerur.

For Petitioners : Dr.Ravichandran
for Mr.S.Ruban Prabu

For Respondents : No appearance

सत्यमेव जयते

ORDER

The above Civil Revision Petition is filed by the petitioner/ plaintiff challenging the order dated 01.08.2018 in I.A.No.308 of 2018 in O.S.No.37 of 2008 by the District Munsif-cum-Judicial Magistrate, Uthiramerur, in setting aside the ex parte order dated 29.06.2018 passed against the respondent herein.

2 The crux of the issue required for the disposal of the above civil revision petition are as follows:

(i) The petitioner/plaintiff has filed a suit in O.S.No.37 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Uthiramerur, to declare his right and title over the "B" schedule of property and for consequential relief, directing the defendant to deliver the vacant possession of the "B" schedule of property after demolishing the superstructure existing in the "B" schedule of property;

(ii) for declaring that the proceedings/order bearing Na.Ka.40256/2005 (H1) dated 12.07.2006 is null and void and not binding on the plaintiff;

(iii) for awarding the costs of this suit; and

(iv) granting such or other reliefs as may be deemed fit in the circumstances of the case.

3 The defendant had entered appearance and filed a written statement. It appears that on 29.06.2018, the matter was listed for the cross-examination of PW1 and since the defendant did not appear, she was set ex parte and the petitioner/plaintiff side evidence was closed and the matter was posted for judgment on 11.07.2018. Therefore, she would seek to set aside the ex parte order.

4 The petitioner/plaintiff had filed a counter, in which it has been stated that the petition has been filed just a day before the date of the judgment and that the application was not maintainable in view of the judgment delivered by the Hon'ble Supreme Court in ***Rasikala Manikchand Dhariwal and other Vs. M.S.S. Food Products [(2012) 2 SCC 196]***.

5 After hearing both the parties, the District Munsif-cum-Judicial Magistrate, by order dated 01.08.2018, allowed the application. The learned Judge has also opined that the facts and circumstances reported in the above judgment would not apply to the facts and circumstances of the present case. Challenging the said order, the revision petitioner is before this Court.

6 The learned counsel for the petitioner/plaintiff would once again reiterate the arguments that had been preferred before the District Munsif-cum-Judicial Magistrate, thus, he would put forward the judgment of the Hon'ble Supreme Court with particular reference to paragraph No.41 therein, which reads as under:

"41. The contention, at the first blush, appears to be attractive but has no substance at all. In the first place, once the hearing of the suit is concluded, and the suit is closed for judgment, order 9 Rule 7 of the Code has no application at all. The very language of Order 9

Rule 7 makes this clear. This provision presupposes the suit having been adjourned for hearing. The Courts, time out of number, have said that adjournment for the purposes of pronouncing judgment is no adjournment of the "hearing of the suit". On 17.03.2005, the Trial Court in the present case did four things, namely, (i) closed the evidence of the plaintiff as was requested by the plaintiff; (ii) ordered the suit to proceed ex parte as the defendants failed to appear on that date; (iii) heard the arguments of the advocate for the plaintiff; and (iv) kept the matter for pronouncement of judgment on 28.03.2005. In view of the above, Order 9 Rule 7 of the code has no application at all and it is for this reason that the application made by the defendants under this provision was rejected by the Trial Court."

7 Heard Dr.Ravichandran for Mr.S.Ruban Prabu, learned counsel for the petitioner/plaintiff and perused the available materials on record.

8 It is seen from the records that the defendant was absent only on one occasion i.e., on 29.06.2018 when the matter was posted for the cross-examination of PW1, the Court has immediately set him ex parte without giving him one more opportunity. In the normal circumstances, the Court ought to have closed the plaint and posted the matter for the evidence of the defendants. He has straight away proceeded to pass an ex parte order and to post the matter for

pronouncing judgment. Incidentally, the judgment has not yet been pronounced. The provisions of Order 9 Rule 7 of CPC read as under:

"9. Courts to try all civil suits unless barred? The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

***[7]** [Explanation II]. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]"*

9 The judgment of the Hon'ble Supreme Court has to be dealt with in the background of the case therein for the simple reason that in the case therein, the defendant has been procrastinating and has been trying to impede the suit at every stage by filing application after application. In fact, when the matter was posted for cross-examination which was again adjourned on several occasions and finally the advocate appearing for the defendant had expressed his helplessness as he did not have authority to cross-examine the plaintiff witnesses and he had represented that the Court could do whatever it wants. It was in this background that the ex parte order was passed and the matter was posted for judgment. Taking into account the conduct of the defendant therein, the Hon'ble Supreme

Court had made an observation that Order 9 Rule 7 will not have any application once the suit is closed for judgment. The Hon'ble Supreme Court has gone to state that in the case therein, the Trial Court had on 17.03.2005 passed the following orders:

(a) it had closed the evidence of the plaintiff as requested by the plaintiff;

(b) it had ordered the suit to proceed ex parte as the defendants failed to appear on that date;

(c) it had heard the arguments of the advocate for plaintiff; and

(d) kept the matter for pronouncement of judgment on 28.02.2005.

10 In the case on hand, there is nothing to show that the arguments of the plaintiff was heard on 29.06.2018 and thereafter, the matter was posted for judgment. Even the revision petitioner in his counter in paragraph No.3 has stated as follows:

"3.This respondent/plaintiff submits that the 1st defendant was set ex parte on 29.06.2018 and the 2nd defendant was set ex parte on 05.01.2012 and the matter was posted for judgment on 11.07.2018. But, a day before it (Judgment), the 1st defendant filed petitions on 10.07.2018 invoking

(a) Order 9 Rule 7 of Code of Civil Procedure 1908,

(b) Order 18 Rule 17 of code of Civil Procedure 1908 r/w Rule 7(3) of Civil Rules of Practice; and

(c) Section 151 of Code of Civil Procedure 1908.”

Therefore, even the arguments have not been heard and therefore, the Court could not have posted the matter for judgment.

In view of the above, this civil revision petition fails and accordingly dismissed, confirming the order passed in I.A.No.308 of 2018. No costs. Consequently, connected civil miscellaneous petition is closed.

05.02.2019

nsd/vji

Index: Yes / No

To

The District Munsif-cum-Judicial Magistrate,
Uthiramerur.

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P.T.ASHA, J.

nsd / vji



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