

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.2228 of 2014

and

MP No.1 of 2014

A. Rajasekaran ... Petitioner

versus

M/s.Anugraha Gardens Association
Door No.49, Dhanalakshmipuram,
Coimbatore – 641 005. ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India set aside the fair and decreetal order dated 22.11.2013 passed in I.A. No.920 of 2013 in I.A.No.441-A of 2013 in O.S. No.1934 of 2008 on the file of the III Additional District Munsif Court at Coimbatore and consequently dismiss the said I.A. No.920 of 2013.

For Petitioner : Mr.T. Saikrishnan
for M/s.Sai Bharath and Ilan
For Respondent : Mr.T.M. Mano for
Mr.Sharath Chandran

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 22.11.2013 passed by the III Additional District Munsif Court, Coimbatore in I.A. No.920 of 2013 in I.A. No.441-A of 2013 in O.S. No.1934 of 2008.

Brief facts leading to the filing of the instant Civil Revision
Petition

2. The petitioner is the plaintiff in the suit. He filed a suit against the respondent seeking for grant of a permanent injunction to restrain the respondent from passing the resolution No.4 in the Annexure to the notice of the respondent / defendant, dated 20.08.2008 in the General Body Meeting proposed to be held on 14.09.2008 or on any other date and quoted in the schedule to the plaint. Pending disposal of the suit, the petitioner filed an application under Order XI Rule 21 CPC seeking for striking out the defence of the respondent / defendant and treat the suit as an undefended one and he has also sought for a decree as prayed for in the suit.

3. It is his case, as seen from the affidavit filed in support of I.A. No.441-A of 2013 filed under Order XI Rule 21 CPC that despite notice to produce was given by the petitioner to the respondent / defendant on 30.03.2009 for production of documents under Order XII Rule 8 CPC, till date, the respondent / defendant did not comply with the said notice to produce the documents. Hence, he does not have the right to defend the suit. On these grounds I.A. No.441-A of 2013 was filed by the petitioner / plaintiff. A counter affidavit was also

filed by the respondent / defendant in I.A. No.441-A of 2013, wherein, they have stated that the request made by the petitioner / plaintiff in his application that the suit will have to be treated as undefended is an abuse of process of law and Court. They have also stated that the suit itself has become infructuous, as the resolution was passed by the respondent / defendant on 14.09.2008 itself.

4. By order dated 16.04.2013, I.A. No.441-A of 2013 was allowed in favour of the petitioner / plaintiff and the relief sought for in I.A. No.441-A of 2013 filed by the petitioner / plaintiff under Order XI Rule 21 CPC was granted in favour of the petitioner / plaintiff. Thereafter, the respondent / defendant filed I.A. No.920 of 2013 under Section 151 CPC to set aside the order dated 16.04.2013 passed in I.A. No.441-A of 2013 before the same Court. By order dated 22.11.2013, the Trial Court allowed I.A. No.920 of 2013 in O.S. No.1934 of 2008 filed by the respondent / defendant and the earlier order, dated 16.04.2013 passed in I.A. No.441-A of 2013 was set aside. Aggrieved by the order dated 22.11.2013, passed in I.A No.920 of 2013 in O.S. No.1934 of 2008, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

5. Heard Mr.T. Saikrishnan, learned counsel for the petitioner and Mr.T.M. Mano, learned counsel appearing for the respondent.

Discussion:

6. The order passed in I.A No.441-A of 2013 filed by the petitioner / plaintiff under Order XI Rule 21 is an order passed on merits. A Counter affidavit was filed by the respondent / defendant in the said application and only after hearing the respective counsels and only after considering the affidavit and counter affidavit filed in I.A. No.441-A of 2013, the Trial Court allowed I.A. No.441-A of 2013, by its order dated 16.04.2013. Instead of preferring an appeal as against the said order, which is an appealable order, as per Order 43 Rule 1 CPC, the respondent / defendant has chosen to file the application under Section 151 CPC before the same Court seeking to set aside the order dated 16.04.2013 passed in I.A. No.441-A of 2013, which was passed on merits. However, the Trial Court entertained the said application and allowed I.A. No.920 of 2013 filed by the respondent / defendant under Section 151 CPC and set aside the earlier order dated 16.04.2013 passed by the same Court in favour of the petitioner / plaintiff in I.A. No.441-A of 2013. Being an appealable order and the order being passed on merits, the respondent / defendant if aggrieved ought to have filed an appeal against the order

dated 16. 04.2013 passed in I.A. No.441-A of 2013 and hence the application viz., I.A. No.920 of 2013 filed by the respondent / defendant under Section 151 CPC before the same Court is not maintainable in the considered view of this Court. However, considering the wrong forum chosen by the respondent / defendant seeking to set aside the order dated 16.04.2013 passed in I.A. No.441-A of 2013, this Court is of the considered view that if and when, the respondent / defendant chooses to file an appeal before the appropriate Court under Order 43 Rule 1 CPC as against the order dated 16.04.2013, the appropriate appellate court shall consider the same on merits, if the respondent / defendant is able to give proper explanation for the delay in filing the appeal as against the order dated 16.04.2013 passed by the Trial Court in I.A. No.441-A of 2013 in O.S. No.1934 of 2008.

7. With the above aforesaid direction, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

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