

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) Nos.3163 and 3164 of 2019
and C.M.P.Nos.20629 and 20632 of 2019

A.Mohanraj ... Petitioner in both CRPs

-Vs-

S.Tamilselvi ... Respondent in both CRPs

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.07.2019 in I.A.Nos.1 and 2 of 2019 in O.S.No.840 of 2018 on the file of the IV Assistant Judge, City Civil Court, Chennai .

For Petitioner : Mr.M.Palani

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 03.07.2019 in I.A.Nos.1 and 2 of 2019 in O.S.No.840 of 2018 on the file of the IV Assistant Judge, City Civil Court, Chennai .

2. Before the Court below, the respondent / plaintiff filed a suit for damages and recovery of a sum of Rs.1,50,000/- from the petitioner / defendant. The said suit has been posted for trial on 01.10.2018, and was adjourned for cross examination of P.W.1 by the defendant's side on 18.02.2019 and again at his request, it seems to have been adjourned to various dates viz., 04.03.2019, 11.03.2019, 18.03.2019 and 28.03.2019.

3. Despite these adjournments, it seems that, no progress had been made in cross examining P.W.1 by the defendant's side. Therefore, on 28.03.2019, the learned Judge set the defendant exparte.

4. Subsequently, without realizing the actual order passed on 28.03.2019, whereby the trial Court set the defendant exparte, mistakenly these I.As. were filed to reopen and recall P.W.1 for cross examination, as if the chance of cross examining P.W.1 by the defendant was closed / denied to the defendant.

5. After hearing both sides, the learned Judge dismissed both the applications, citing the reason that, since on 28.03.2019, the defendant was set exparte, instead of filing a petition to have the exparte order set aside, the defendant has chosen to file these two applications to reopen and recall P.W.1 and therefore, the same cannot be entertained in view of the fact that as on date ie., on the date of filing of these applications, the defendant has already been set exparte and, unless and until the order of setting him exparte is set aside on a proper application filed in this regard by the defendant, the present applications would not be entertained and therefore, on that ground alone, these applications were dismissed by the learned Judge. As against the said order, the present civil revision petitions are filed before this Court.

6. Heard Mr.M.Palani, learned counsel appearing for the petitioner / defendant and perused the materials placed on record.

7. Learned counsel appearing for the petitioner would submit that, it is purely a mistake committed by the counsel before the lower Court, who is a junior counsel, who, instead of noting the actual order passed on 28.03.2019, seems to have been in the wrong impression that on that date only P.W.1 evidence was closed, thereby the chance of cross examining P.W.1 was denied to the defendant, and therefore, only in that context, he filed these two applications to reopen and recall P.W.1, but the fact remains that actually on that date ie., on 28.03.2019, the defendant was set exparte.

8. Learned counsel for the petitioner further submits that, technically the revision petitioner / defendant has to file a formal petition to set aside the exparte order and in this regard, the petitioner is ready and willing to file such petition and of course in the meanwhile some delay would have occurred and hence with the condone delay petition if such petitions to set aside the exparte order are filed, the same may be directed to be considered on merits, by taking into account these developments by the Court below.

9. In view of the said submissions of the learned counsel for the petitioner and after taking into account the factual matrix of the case, to meet the ends of justice, this Court is inclined to dismiss the above Civil Revision Petitions at the admission stage itself, with the following directions.

10. In view of the order passed by the trial Court for the reasons stated therein, the said order cannot be found to be infirm and therefore, it need not be interfered with.

Therefore, these Civil Revision Petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

11. However, it is open to the petitioner to file a necessary petition to set aside the exparte order dated 28.03.2019, of course with a condone delay petition, if any delay had occurred in this regard. Once such petitions are filed, including condone delay petition, the same shall be considered by the trial Court on merits and in accordance with law, and also taking into consideration the developments taken place, as has been explained above. For the mistake or error committed by the counsel, the party shall not be prejudiced, and therefore, taking a pragmatic view of the matter, the trial Court is directed to decide such applications to be filed by the petitioner.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The IV Assistant Judge,
City Civil Court, Chennai.

+1cc to M/s.M.Palani, Advocate Sr.81807

C.R.P. (PD) No.3163 & 3164 of 2019

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srg 25/09/2019

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