

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD)No.2209 of 2017
and C.M.P.No.10532 of 2017

1. Umarani
2. Kathiresan

... Petitioners

Vs.

Valarmathi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India pleased to set aside the fair and decreetal order of the Additional District Court at Namakkal dated 08.06.2017 in I.A.No.19 of 2017 in O.S.No.195 of 2015.

For Petitioners : M/s.P.Valliappan
For Respondent : Mr.R.Gokulakrishnan

WEB COPY
ORDER

Challenging the fair and decreetal order dated 08.06.2017 in I.A.No.19 of 2017 in O.S.No.195 of 2015 on the file of the Additional District Court at Namakkal, the above Civil Revision Petition has been filed.

2. The above civil revision petition has been filed by the 3rd and 4th defendants for setting aside the exparte order passed against them on 19.08.2016. The defendants were set exparte as they have not filed written statement.

3. Interlocutory Application No.19 of 2017 has been filed by the Civil Revisions Petitioners/defendants 3 and 4 for setting aside the decree in O.S.No.195 of 2015. Along with the said I.A., the Petitioners also filed written statement.

4. The respondent herein viz., the Plaintiff would contend that the revision petitioners had raised a counter claim and that counter claim in the earlier suit in O.S.No.194 of 2004 had been dismissed by the trial court and therefore, the defendants 3 and 4 had filed the present revision petition seeking to revive the earlier counter claim.

5. The learned Additional District Judge, Namakkal, by order dated 08.06.2017 dismissed the application in I.A.No.19 of 2017 and thus dismissed the prayer of the Revision Petitioners herein for setting aside the exparte order passed in O.S.No.195 of 2015 dated 19.08.2016. The learned Judge

had observed that when O.S.No.194 of 2004 had been posted for filing written statement by the defendants, they have not filed the written statement and therefore, on 19.08.2016, the defendants were set exparte. The learned Judge further observed that the defendants 3 and 4 cannot be permitted to file the said application in I.A.No.19 of 2017, seeking to set aside the exparte order and call upon the Court to refer to the filing of the written statement in the earlier suit. Therefore the learned Judge dismissed the above application finding no merits in the application.

6. Heard both sides.

7. From a reading of the application, it is seen that on 19.08.2016, the revision petitioner/defendants 3 & 4 were set exparte for non filing of the written statement. It is further seen that on 07.10.2016, application in I.A.No.19 of 2017 has been filed seeking to set aside the exparte order along with written statement. The reading of the written statement does not indicate that it is filed as regards counter claim and this Court is not in a position to understand as to why the learned Judge has to come to observe that the written statement has not been filed till 19.08.2016. Be that as it may. Considering the fact that the application is one filed under Order 9 Rule 7 of the Code of Civil Procedure the learned Judge ought to have

treated the application liberally.

P.T.ASHA, J.

dpq

5. Accordingly, the Civil Revision Petition is allowed. The fair and decretal order passed in I.A.No.19 of 2017 in O.S.No.195 of 2015 is set aside. Consequently connected miscellaneous petition is closed.

8. Since the suit is of the year 2015 and now the written statement has been filed, the learned Additional District Judge, Namakkal is directed to dispose of the O.S.No.195 of 2015 within a period of four months from the date of receipt of a copy of this order.

29.04.2019

Index : Yes/No

Internet : Yes

Speaking order/Non-speaking order
dpq

To

1. The Additional District Court
Namakkal

C.R.P.(PD)No.2209 of 2017
and C.M.P.No.10532 of 2017



WEB COPY