



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (NPD)No.1287 of 2011

and

M.P. (MD)No.1 of 2011

WEB COPY

P.R.Chandran

:Petitioner/Respondent/
Plaintiff

vs.

1.Subbaiah

2.Kannan

:Respondents/Petitioner/
Defendants

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the fair and decreetal order in I.A.No.508 of 2010 in O.S.No.32 of 2008 on the file of the Additional District Munsif Court, Karaikudi, dated 23.08.2010.

For Petitioner

:Mr.R.Sundar Srinivasan

For Respondents

:Mr.B.Muruganandham

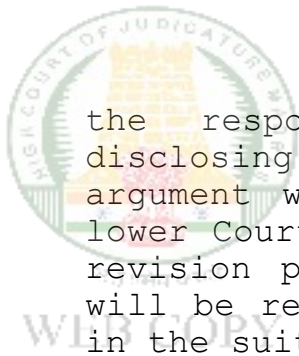
ORDER

This Civil Revision Petition is filed as against the order passed in I.A.No.508 of 2010 in O.S.No.32 of 2008, by the Additional District Munsif, Karaikudi.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The petitioner herein, as plaintiff, filed the suit in O.S.No.32 of 2008 before the Additional District Munsif Court, Karaikudi, for permanent injunction in respect of the suit property. The trial Court passed an *ex parte* order as against the respondents herein, on 06.10.2009, for non appearance of their Advocate for cross examination of PW-1. A petition was filed to condone the delay of 161 days in filing a petition to set aside the *ex parte* decree. The petition to condone the delay was allowed on payment of Rs.750/- by way of cost to the revision petitioner. It is as against order allowing the petition, the above civil revision petition is filed.

3.The learned Counsel for the petitioner submitted that the respondents have filed a petition earlier to set aside the order dated 06.10.2009 and the said petition though was filed on 15.10.2009, the respondents have not disclosed the same, as to what happened to the earlier petition filed by them. It is, therefore, submitted by the learned Counsel for the revision petitioner that



the respondents cannot maintain another application without disclosing the manner of disposal of the earlier petition. Same argument was also advanced by the revision petitioner before the lower Court. The lower Court found that the objection raised by the revision petitioner is too technical and that substantial justice will be rendered only if an opportunity is given to the defendants in the suit to get a judgment on merits.

4.Before this Court, the revision petitioner has not produced any record to show that the earlier petition was filed and it was not prosecuted. As stated by the revision petitioner, if any petition was filed earlier, there was no question of condoning the delay. This Court is unable to accept the contention of the revision petitioner without any valid proof. Even assuming that the earlier application was filed and it was misplaced or cannot be traced, the subsequent application filed by the respondents with the delay of 161 days need not be thrown out on the technical ground.

5.From the counter filed the revision petitioner, the objection is that a petition was filed by the respondents earlier under Order 9 Rule 9 CPC. The respondents are not plaintiffs and hence there was no occasion to the respondents to file a petition to restore the suit or questioning the order. Hence, this Court is not inclined to entertain this Civil Revision Petition on a technical plea, which is neither pleaded properly nor supported by any document.

6.In such circumstances, this Civil Revision Petition is dismissed. The order in I.A.No.508 of 2010 in O.S.No.32 of 2008, dated 23.08.2010, passed by the learned Additional District Munsif, Karaikudi, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Munsif , Karaikudi.

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-80498[F] dated 08/08/2019)

+1 CC to M/s.B.MURUGANANDAM, Advocate (SR-80698[F] dated 08/08/2019
C.R.P. (MD) (NPD)No.1287 of 2011

07.08.2019

cmr

KK/SAR/26.08.2019/2P-4C/