



WEB COPY

C.R.P(MD)No.250 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P (MD)No.250 of 2012

and

M.P (MD)No.1 of 2012

K.Murugan

... Petitioner/Appellant/
Petitioner/Defendant

Vs.

Thangapandian

... Respondent/Respondent/
Respondent/Plaintiff

Prayer : Petition filed under Section 115 of the Code of Civil Procedure against the order dated 30.09.2011 made in C.M.A.No.49 of 2010 on the file of the District Judge, Kanyakumari at Nagercoil, in confirming the order dated 27.04.2010 passed in I.A.No.153 of 2010 in O.S.No.41 of 2007 on the file of the II Additional Subordinate Judge, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.A.Sivaji

ORDER

The present Civil Revision Petition has been filed challenging the order dated 30.09.2011 made in C.M.A.No.49 of 2010 on the file of the District Judge, Kanyakumari at Nagercoil, in confirming the order dated 27.04.2010 passed in I.A.No.153 of 2010 in O.S.No.41 of 2007 on the file of the II Additional Subordinate Judge, Nagercoil.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent/plaintiff filed a suit in O.S.No.41 of 2007 on the file of the II Additional Subordinate Judge, Nagercoil, seeking specific performance of a contract and an exparte decree came to be passed on 04.06.2009. Hence, the petitioner/defendant filed I.A.No.153 of 2010 seeking to set aside the said exparte decree and the said application was also dismissed by the trial Court on 27.04.2010. Hence, the petitioner/defendant filed C.M.A.No.49 of 2010 on the file of the District Judge, Kanyakumari District at Nagercoil, however, the said appeal also came to be dismissed on 30.09.2011. Aggrieved thereby, the present Civil Revision Petition has been filed.



3. The learned Counsel for the petitioner/defendant submitted that an exparte decree came to be passed in the suit filed by the respondent/plaintiff seeking specific performance of a contract and the petitioner/defendant filed an application under Section 9 Rule 13 of the Code of Civil Procedure and though the petitioner/defendant produced ample evidence to show that he was not well and he was bedridden and he was taking treatment as inpatient, the same was not considered by the lower Court and the same was dismissed by the trial Court without any application of mind and hence, he sought to interfere with the order passed by the lower Court.

4. Per contra, the learned Counsel for the respondent/plaintiff submitted that this is not the first occasion where the petitioner herein was set exparte and in an earlier occasion, there was exparte order and the finding of the Court that he was dragging on the matter and nearly 10 years have gone by without the issue seeing the light of the day. He further submitted that sufficient opportunity was given by the lower Court for the cross-examination of P.W.1 who was the respondent herein, however, the petitioner/defendant had dragged on the proceedings and though medical certificate was produced by the petitioner/defendant to prove his illness, the lower Court rightly rejected the claim of the petitioner/defendant and hence, prayed for the dismissal of this revision petition.

5. Heard both sides.

6. Admittedly, there is no doubt that in the earlier hearing, the petitioner was set exparte and it was restored and for that, the petitioner cannot be penalised. The medical certificate has been produced with regard to his illness. The petitioner ought to have shown interest in cross-examining P.W.1 and he has been taking time, but the medical certificate, as long as it is genuine, it cannot be ignored and penalised and there is a chance for the petitioner to contest the matter and get the orders on merits.

7. According to the respondent/plaintiff, the petitioner is in the habit of dragging on the proceedings and any number of indulgences would not help and hence, he should be put on severe terms so as to enable him to participate in the proceedings.

8. In the considered opinion of this Court, the conduct of the petitioner in dragging on the matter is deprecated. The usual order restoring by means of imposing cost is not going to help as there is ample chance for the petitioner to indulge in the very same act, for the reason that in the present case, the second time C.M.A., has been filed which was rejected and the present Civil Revision Petition has been filed.



9. Taking into consideration the rival submissions and more particularly, the contentions of the learned Counsel for the respondent/plaintiff, this Court is of view that the lower Court shall take up the suit in O.S.No.41 of 2007 which is more than a decade old and proceed with the matter on day-to-day basis without adjourning the matter beyond seven working days at any point of time. As there is a fault on the part of the petitioner and is trying to drag on the proceedings, this Court restores the suit in O.S.No.41 of 2007 on the file of the II Additional Subordinate Court, Nagercoil, on condition that in case of any adjournment sought for by the petitioner herein, who is the defendant in the suit, the Court may consider adjournment not beyond seven days on payment of Rs.500/- (Rupees Five Hundred only) on each occasion. If there is any continuous adjournment on the part of the petitioner/defendant for more than three occasions, the cost will be at Rs.1,000/- (Rupees One Thousand only) for each hearing. This will ensure that the petitioner/defendant is co-operating with the lower Court for the disposal of the suit and that there can be a finality in the suit. The trial Court is expected to decide the suit at the earliest point of time as it is more than 10 years old.

10. Accordingly, this Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

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Sub Assistant Registrar(CS)

rsb

To

1.The District Judge, Kanyakumari at Nagercoil.

2.The II Additional Subordinate Judge, Nagercoil.

copy to

The Section Officer,V.R.Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-102478

+1 CC to M/s.A. SIVAJI, Advocate (SR-102713

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