



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)No.787 of 2012
and
M.P.(MD)No.1 of 2012

1.C.Auvdaiyappan Asari
2.Thangam

... Petitioners / Defendants 2 & 3/
Respondents 2 & 3

Vs.

1.Kathirvel Asari ... 1st Respondent/ Plaintiff/ Petitioner

2.S.Avudaiyappan ... 2nd Respondent/ 1st Defendant/ 1st Respondent

PRAYER: This Civil Revision petition is filed under Article 227 of Civil Procedure Code, against the order dated 28.02.2012 made in I.A.No.719 of 2011 in O.S.No.53 of 2009, on the file of the District Munsif Court, Sathankulam.

For Petitioner : Mr.S.Siva Thilakar
For Respondent-1 : G.Thalaimutharasu

For Respondent-2 : No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below allowing an application to condone the delay of 63 days in filing the petition for restoration of the Suit.

2. The first respondent filed a suit against the petitioners and the 2nd respondent claiming for the relief of declaration and for mandatory injunction. A written statement was also filed in the suit and the suit was at the stage of trial. At that point of time, since the first respondent was not present before the Court and did not take effective steps to proceed further with the trial, the suit was dismissed for default on 07.06.2011. The suit was thereafter restored by virtue of an application that was allowed on 15.07.2011. Even thereafter, no steps were taken to proceed further with the trial and the first respondent again was not present before the Court below and the suit was again dismissed for default on



14.09.2011. An Application came to be filed to restore the suit with a delay of 63 days. This application was allowed by the Court below and it has now become the subject matter of challenge before this Court.

3. The learned counsel appearing for the petitioners submitted that the first respondent is not seriously contesting the suit and twice the suit has been dismissed for default. The learned counsel further submitted that even though the first respondent had given health reasons to be the ground for not being present before the Court, no medical certificate has been filed before the Court below and the Court below even without considering the same, has allowed the application by imposing costs of Rs.250/- payable to each of the defendants. The learned counsel therefore sought for setting aside the order passed by the Court below.

4. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that the 1st respondent had valid reasons for not being able to appear before the Court below on the date of hearing. The learned counsel submitted that substantial rights between the parties will have to be decided by the Court below. Therefore, an opportunity should be given to the first respondent to contest the suit on merits. The learned counsel concluded his arguments by submitting that the Court below has properly exercised its jurisdiction and therefore, there is no ground to interfere with the same.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. It is seen from the records that this is the second occasion where the suit was dismissed for default. The right of the parties in the common wall is the subject matter of the dispute in the suit. This dispute has to necessarily be resolved on merits. Therefore, this Court is of the considered view that an opportunity must be given to the first respondent to contest the suit on merits. However, the cost imposed by the Court below has a fleabite effect and therefore, this Court is inclined to increase the cost payable by the 1st respondent to the petitioners and the 2nd respondent.

7. In the result, the order passed by the Court below is upheld and the cost imposed by the Court below is modified and the 1st respondent is directed to pay a cost of Rs.1500/- (Rupees One Thousand Five Hundred Only) to each of the defendants within a period of two weeks from the date of receipt of a copy of this order. After the payment of costs, a memo shall be filed before the Court below and the Court below shall restore the suit and proceed further in accordance with law. If the cost is not paid within the time stipulated by this Court, the condone delay application in I.A.No.719 of 2011 shall stand dismissed and consequently, the



8. If the cost is paid within the time stipulated by this Court, the Court below shall proceed further with the suit and complete the proceedings in O.S.No.53 of 2009, within a period of three months from the date of receipt of a copy of this order.

9. In the result, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar

To
The District Munsif,
Sathankulam.

+1 CC to M/s.S.SIVATHILAKAR, Advocate (SR-85939[F] dated 09/09/2019

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09.09.2019

MPK
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