



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD) No.2145 of 2013

and

M.P (MD) No.1 of 2013

Balasubramanian

... Petitioner/Respondent/Respondent/
Plaintiff

-Vs-

Kavitha

... Respondent/Appellant/Petitioner/
Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 12.03.2013 made in C.M.A.No.17 of 2012 on the file of Additional District Judge, Pudukkottai reversing the fair and decreetal order dated 28.06.2011 made in I.A.No.47 of 2010 in O.S.No.124 of 2003 on the file of Subordinate judge, Pudukkottai.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.R.Paranjothi

O R D E R

The plaintiff in O.S.No.124 of 2003 has come up with this revision challenging the order made in C.M.A.No.17 of 2012 in and by which, the lower appellate Court allowed the appeal filed by the respondent resulting in setting aside the ex-parte decree passed by the trial Court on 01.03.2010.

2. The suit in O.S.No.124 of 2003 was laid by the petitioner for specific performance and for agreement of sale. On two occasions, the defendant was set ex-parte and ex-parte decree came to be passed on 23.11.2004 and 22.01.2007. On both occasions, the ex-parte decree was set aside. While the trial was in progress, the defendant absented herself and on 01.03.2010 the trial Court set her ex-parte and granted a decree for third time. Therefore, the respondent came up with I.A.No.47 of 2011 seeking to set aside the ex-parte decree. The reasons assigned in the affidavit filed in



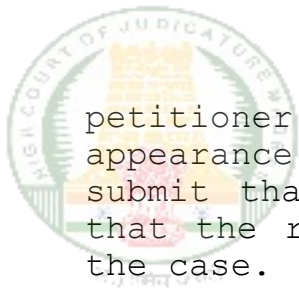
support of the application are that an application in I.A.No.365 of 2009 filed by the defendant seeking to summon certain documents, was dismissed by the trial court and a copy application was filed seeking copies of the said order, in order to enable the defendant to challenge the same. An application in I.A.No.507 of 2009 was also filed seeking stay of further proceedings, in the suit, till such time, a copy of the order in I.A.No.365 of 2009 is furnished to the defendant. The said application was also allowed and the trial court granted stay of further proceedings for a period of one month. It is also averred in the affidavit that a copy of the order in I.A.No.365 of 2009 was not furnished to the defendant/respondent herein till the date of filing of the present application in I.A.No.47 of 2011.

3. It is also further stated that the respondent/defendant in the suit was affected with chicken-Guniya and was unable to move out. The above application was stoutly resisted by the petitioner/decreed-holder contending that the respondent herein is a habitual defaulter. She had left the suit set ex-parte on two occasions and those ex-parte decrees were set aside on her applications. The suit itself was adjourned for more than eight occasions for cross-examination. Therefore, according to the plaintiff, the reason set out in the affidavit filed in support of I.A.No.47 of 2011 did not constitute the sufficient cause for setting aside the ex-parte decree. The trial court, on consideration of the averments made in the affidavit and the counter affidavit, concluded that the defendant is guilty of dilatory tactics and she is a habitual defaulter. On the said findings, the learned trial Judge, without going into reasons assigned for the absence on 01.03.2010, had dismissed the application.

4. Aggrieved, the defendant preferred an appeal in C.M.A.No.17 of 2012. The learned Additional District Judge, who heard the Civil Miscellaneous Appeal, on re-consideration of the facts and the materials on record, concluded that the reason assigned would amount sufficient cause for setting aside the ex-parte decree. He also found that there were some connected suits and there was a genuine difficulty faced by the defendant in obtaining certain documents for the purpose of cross-examination. The lower appellate Court also faulted the trial court for dismissing the application on the basis of the previous conduct. On the above conclusion, the appellate court allowed the appeal on condition that the defendant pays Rs.5,000/- and directed the trial court within a period of four months. This order of the lower appellate court, is the subject matter of the challenge in the Civil Revision Petition.

5. I Have heard Mr.P.Thiagarajan, learned counsel appearing for the petitioner and Mr.R.Paranjothi, learned counsel appearing for the respondent.

<https://hcservices.courts.gov.in/hcservices/> Mr.P.Thiagarajan, learned counsel appearing for the



petitioner would contend that the reasons assigned for the non-appearance on 01.03.2010 are hardly convincing. He would also submit that the lower appellate Court is not right in concluding that the respondent/defendant was under disability to proceed with the case.

WEB COPY

7. Contending contra, Mr.R.Paranjothi, learned counsel appearing for the respondent would submit that the trial Court was not right in taking into account the previous conduct of the defendant refusing to set aside the ex-parte decree. The lower appellate Court, according to him has rightly concluded that the reasons assigned in the affidavit for the absence on 01.03.2010 would amount to sufficient cause within the meaning of Rule 13 of Order 9 of C.P.C.,

8. I have considered the rival submissions.

9. Needless to point out that the order of the trial court is hardly convincing. This court as well as the Hon'ble Apex Court repeatedly pointed out that the prior conduct of a party cannot be taken into account while deciding the sufficient cause contemplated under Rule 13 of Order 9 of C.P.C. If the reasons for the absence on the day fixed for hearing are convincing the court is bound to set aside the ex-parte decree.

10. The nature of the suit also should be borne in mind. The court while deciding applications seeking to set aside the ex-parte decree should have take into account the fact that the defendant is facing a suit for specific performance. No doubt, there is some negligence on the part of the defendant. But the same cannot form the basis for rejection of the subsequent application for setting aside the Ex-parte decree. The reasons assigned in the affidavit filed in support of the application according to the lower appellate Court would amount to sufficient cause for setting aside the ex-parte decree.

11. The lower appellate Court has also taken note of the fact that there are other proceedings pending and there were genuine difficulties for the defendant to proceed with the case on 01.03.2010. I do not find that the order of the lower appellate Court made in C.M.A.No.17 of 2012 is materially irregular or suffers from any jurisdictional error in order to enable me to interfere under Section 115 of the Civil Procedure Code.

12. The lower appellate Court had taken a pragmatic view of the matter and apart from directing the defendant to pay cost of Rs.5,000/-, had directed the trial court to dispose of the suit in a time bound manner. The order of the lower appellate Court, in my considered view, takes care of the plaintiff's interest also. Unfortunately the plaintiff has preferred the Civil Revision



this Court is of the considered opinion that the Civil Revision Petition has to fail and it is accordingly dismissed.

13. The trial court namely, the Subordinate Judge, Pudukkottai is directed to dispose of the suit in O.S.No.124 of 2003 within a period of six months from the date of receipt of a copy of this order and report to this court regarding disposal of the suit. The parties are required to co-operate with the court for disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

am

To

1.The Additional District Judge,
Pudukkottai.

2.The Subordinate Judge,
Pudukkottai.

Copy to:

The Record Keeper, V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-103876[F] dated 06/12/2019)

C.R.P. (PD) (MD) No.2145 of 2013

05.12.2019

JMN(31.12.2019) 4P : 6C