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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2558 of 2015

and

M.P. (MD) No.1 of 2015

24 Manai Telungu Chettiargal Society,
Represented by its Hereditary Poosari,
Ponram

.. Petitioner

Vs.

1.Nallasamy
2.Nallajothi Perumal
3.Srinivasan

.. Respondents

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.07.2015 passed in I.A.No.117 of 2015 in I.A.No.79 of 2015 in O.S.No.21 of 2015 on the file of District Munsif Court, Sattur, Virudhunagar District.

For Petitioner	: Mr.M.Kannan
For Respondents 2 and 3	: Mr.M.Murali
For 1 st Respondent	: No Appearance

ORDER

Heard Mr.M.Kannan, learned counsel appearing for the petitioner and Mr.M.Murali, learned counsel appearing for the respondents 2 and 3.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.117 of 2015 in I.A.No.79 of 2015 in O.S.No.21 of 2015 dated 13.07.2015 on the file of District Munsif Court, Sattur, Virudhunagar District.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.21 of 2015 for a prayer of injunction. While pending disposal of that suit, the petitioner has filed a petition in I.A.No.79 of 2015 for a prayer of temporary injunction and the trial Court passed an exparte order



against the defendants and allowed the interim injunction petition. Against which, the respondents have filed a petition in I.A.No.117 of 2015 to set aside the exparte order passed in I.A.No.79 of 2015. The trial Court allowed the petition. Against the order, the petitioner has come forward with this revision petition.

4.On the side of the petitioner, it is stated that the petitioner got a temporary injunction order from the trial Court and later the respondents appeared before the trial Court and filed a petition to set aside the ex parte order. The ex parte order cannot be set aside as the course available to the respondents is only to file an appeal. Though sufficient opportunity was given to the respondents, they did not turn up and that the trial Court did not pass any speaking order which is not the fault of the plaintiff. The respondents can file a petition to modify the order. Only when a decree is passed, the respondents can file a petition to set aside an exparte decree and not against the order passed I.A. petition. The right of the petitioner will be curtailed and that the petitioner cannot be prejudiced by a non speaking order passed by the trial Court. If the exparte order is set aside, the petitioner will be put into irreparable loss.

5.The learned counsel appearing for the petitioner would rely upon the Judgment passed by the Hon'ble Supreme Court in the case of **Metta Chandra Sekhara Rao v. Ganga Ram and another** reported in **2003 SCC Online AP 204 = AIR 2003 AP 378**, which reads as follows:

"8.I have perused the order under Revision and the other material on record. As can be seen, the Court below considered the application in question in terms of Order 9, Rule 13 of Civil Procedure Code. I find force in the submission of the learned counsel for the petitioner that the Court below committed an error in invoking the provisions of Order 9, Rule 13 of Civil Procedure Code, since the order in I.A.No.827 of 2002 is not a 'decree' within the meaning of Section 2(2) of Civil Procedure Code.

9.It is pertinent to note that under Clause (a) of sub-section (2) of Section 2 of Civil Procedure Code "any adjudication from which an appeal lies as an appeal from an order" is specifically excluded from being a decree. Since an order passed under Order 39, Rule 1 and 2 of Civil Procedure Code is an appealable order under Section 104 read with Order 43, Rule 1(r) of Civil Procedure code, it comes within the purview of the exclusion under Clause (a) of the Section 2(2) and consequently it cannot be treated as a "decree" within the meaning of Section 2(2) of Civil Procedure Code. Therefore the irresistible conclusion is that



Order 9, Rule 13 of Civil Procedure Code cannot be invoked for setting aside an order of ex parte temporary injunction passed under Order 39, Rules 1 and 2 of Civil Procedure Code. Hence the order under revision setting aside the order of temporary injunction granted in I.A.No.827 of 2002 invoking the provisions of Order 9, Rule 13 of Civil Procedure Code cannot be upheld."

6.On the side of the respondents, it is stated that the matter is pertaining to the workshop in the temple and the matter is to be settled.

7.It is seen that the the real dispute is regarding the workshop in the temple and the plaintiff got an interim injunction order in I.A.No.79 of 2015 and that the diary extract reveals that the third respondent filed a counter and the order is a contesting order. The respondents 1 and 2 in the I.A. petition are set exparte and they filed a petition in I.A.No.117 of 2015 for setting aside the exparte order. When one of the respondents filed a counter, the order passed in I.A.No.79 of 2015 cannot be termed as an exparte order. But unfortunately the trial Court did not pass a speaking order on merits but passed a single line order. Though there are several earlier decisions that only a speaking order is to be passed, the trial Court failed to pass a speaking order and has passed a single line order. Without considering that the order was passed after hearing both sides, the same Judge has allowed the petition in I.A.No.117 of 2015 as for setting aside "an exparte order".

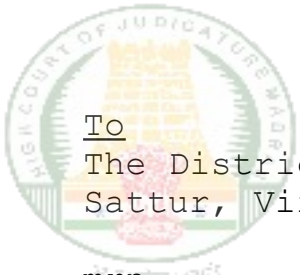
8.In the above circumstances, the order passed by the trial Court is to be set aside. Since the case is regarding the workshop of the temple, a suitable direction is to be given to the trial Court to complete the trial within a time frame.

9.Hence, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of copy of this order. With the above direction, the Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.117 of 2015 in I.A.No.79 of 2015 in O.S.No.21 of 2015 dated 13.07.2015 on the file of District Munsif Court, Sattur, Virudhunagar District. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar ()

// True Copy //



To
The District Munsif Court,
Sattur, Viruthunagar District

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C.R.P. (PD) (MD) No.2558 of 2015
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