



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2019

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.994 of 2019 (PD)

and

C.M.P. (MD) .No.5553 of 2019

S.Maharajan

... Petitioner/
Petitioner/1st Defendant

Vs.

1.S.Subramanian

... 1st respondent /
1st respondent / Plaintiff

2.P.Karuppasamy

... 2nd respondent/
2nd respondent / 2nd defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 03.04.2019, passed in I.A.No.9 of 2019 in O.S.No.216 of 2016 by the Additional District Munsif, Thoothukudi.

For petitioner

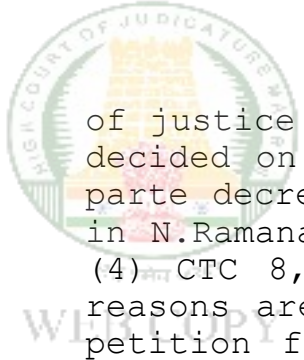
: Mr.A.Arumugam

ORDER

This civil revision petition has been filed by the petitioner challenging the order, dated 03.04.2019, passed in I.A.No.9 of 2019 in O.S.No.216 of 2016, whereby and whereunder the Court below dismissed petition filed by the petitioner for setting aside the ex parte order dated 03.02.2017.

2. It is seen that the first respondent herein has filed the suit in O.S.No.216 of 2016 for dissolution of the firm with effect from 13.07.2016 and for the settlement of accounts, payment of his 1/5th share in the net value of the profits, capital and assets of the firm. In view of non filing of the written statement, the petitioner/ 1st defendant was set ex parte on 03.02.2017. Seeking to set aside the said ex parte order dated 03.02.2017, the petitioner filed I.A.No.9 of 2019. The Court below has dismissed the said petition holding that the petition has been filed while the matter listed for pronouncing judgment and that the petitioner did not aver any reason for filing this petition belatedly. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner/1st defendant vehemently submitted that the petitioner/1st defendant has good defense in the main suit. The procedure is after all a handmaid



of justice and substantial justice requires that the case has to be decided on merits and should not be summarily disposed of as an ex parte decree. By relying upon a decision of a learned Single Judge in N.Ramanathan and another Vs. Meenakshisundaram, reported in 2001 (4) CTC 8, learned counsel would further submit that even if the reasons are not assigned for their non appearance in the past, the petition filed under Order 9 Rule 7 of C.P.C. can be allowed on terms. In view of the above and considering the fact that till date the judgment has not been pronounced, the Court below could have liberally considered the application filed under Order 9 Rule 7 of C.P.C. and allowed the same. But, the Court below has failed to do so. Hence, this Court may set aside the order passed by the Court below and allow the application filed under Order 9 Rule 7 of C.P.C. Thus, he prayed to allow this petition.

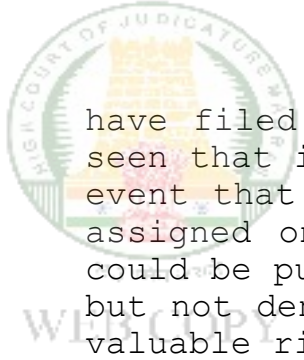
4. Heard the learned counsel for the petitioner and perused the records carefully.

5. Order 9 Rule 7 of C.P.C. provides as to when and how an application for setting aside the ex parte proceedings can be filed. This provision mandates that application can be filed when the case is adjourned for hearing. Application will not lie if hearing is concluded. That means, if arguments are heard, judgment is reserved and the Court has to pronounce judgment, then, at that stage, the application for setting aside the ex parte proceedings would not lie.

6. In a catena of decisions also, the Hon'ble Supreme Court and this Court has held that where the hearing of the suit is completed and the Court has adjourned the case for pronouncing judgment, the application under Order 9 Rule 7 of C.P.C. would not be maintainable.

7. Here, in this case, the petitioner was set ex parte on 03.02.2017. It is not in dispute that while the suit was posted for pronouncing judgment, the petitioner has filed the petition in I.A.No.9 of 2019 seeking to set aside the ex parte order before the Court below. Taking into account the said aspect, the Court below has dismissed the application filed by the petitioner. This Court does not find any reason to interfere with the said finding of the Court below.

8. The Court below has further held that the petitioner has not assigned any valid reason for filing the petition belatedly and it gives an impression that the petitioner has filed this petition only in order to drag on the proceedings. According to the petitioner, even if the petitioner did not aver any reason, the Court below could have liberally considered the application and ordered the same on terms. In support of the said contention, he relied upon N.Ramanathan case, cited supra. A perusal of the above decision relied on by the petitioner shows that in that case, during the pendency of the suit for hearing, the petitioners therein



have filed the application under Order 9 Rule 7 C.P.C. It is also seen that in the said decision, this Court has held that only in the event that the petitioners are not able to substantiate the reasons assigned on their part for their non appearance in the past, they could be punished only on such terms as costs being saddled on them, but not denying their right to contest the very suit in which their valuable rights get involved. But, in this case, the petitioner does not even aver any reason for his non appearance and for the delay in filing the application, and hence, the question of substantiating the reason would not arise. Therefore, the decision relied on by the petitioner is not applicable to the facts and circumstances of this case. The Court below has rightly dismissed the petition filed by the petitioner. There is no merit in this petition.

9. In view of the above, this Civil Revision Petition is dismissed, at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Munsif,
Tuticorin.

Copy to: The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.C.CHRISTOPHER, Advocate SR-72065.

C.R.P(MD) .No.994 of 2019 (PD)
27.06.2019

CS: 16/07/2019 3P 5C