



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2019

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD).No.2835 of 2018(PD)
and
C.M.P.(MD).No.12308 of 2018

Saravanaperumal(Died)

1.Kathiresan

2.Murugesan

3.Moorthy

... Revision Petitioners/Respondents/
Defendants

Vs.

Santhiran

... Respondent/Respondent/Plaintiff

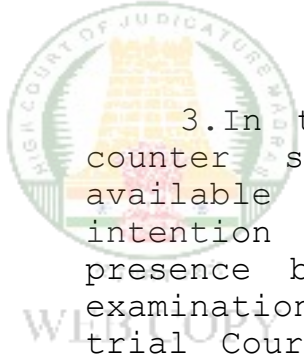
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 31.10.2018 made in I.A.No.2 of 2018 in O.S.No.6 of 2009 on the file of the District Munsif Court cum Judicial Magistrate Court, Rameswaram, Ramanathapuram District.

For Petitioners : Mr.D.Balamurugapandi
For Respondent : Mr.R.Jegadeeswaran

O R D E R

This Civil Revision Petition has been preferred by the petitioners, who are the defendants in the suit against the order dated 31.10.2018 passed in I.A.No.2 of 2018 in O.S.No.6 of 2009 by the District Munsif Court cum Judicial Magistrate Court, Rameswaram, Ramanathapuram District.

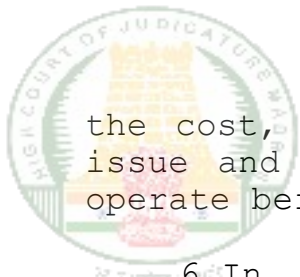
2.The respondent/plaintiff has filed I.A.No.2 of 2018 in O.S.No.6 of 2009 for restoration of the suit, which was dismissed for default on 16.11.2017. In the said I.A., the defendants/petitioners had stated that the case was posted for cross-examination by the defendants on 16.11.2017 and on that date, the plaintiff has gone to his daughter's house and he has also got illness and hence, he could not appear before the Court on 16.11.2017. Since the case was posted for cross-examination by the defendants and because of the non-appearance of the plaintiff due to his illness, the said absence is beyond his control and it was not negligent or wanton on his side. Hence, the plaintiff/respondent sought for restoration of the said suit because of his non-appearance on 16.11.2017, the said suit was dismissed.



3. In the said I.A., the defendants/respondents have filed a counter statement stating that the plaintiff/petitioner was available on 16.11.2017 in his native place and only with an intention of delaying the proceeding, he purposely evaded his presence before the trial Court on that date to avoid cross-examination by the defendants. The said fact was reported before the trial Court, whereas, the same was denied by the plaintiff. The trial Court, considering the contentions raised by both the plaintiff and the defendants, has stated that *(in the interest of justice, the petition was allowed on cost of Rs.1,500/- to the respondent on or before 27.11.2018)*. Aggrieved against the said order, the defendants have preferred the present Civil Revision Petition.

4. In spite of the reasons stated by the defendants in their counter statement recording the availability of the plaintiff in his native place on the specific date of 16.11.2017, when the case was posted for cross-examination by the defendants, the said fact was also reported before the Court and an attempt was also made to bring the fact that the plaintiff is very much available in his native place, the Court has passed an order without giving any reason or any discussion for allowing such application. When the respondent/plaintiff has purposely evaded himself from the appearance before the Court for the purpose of cross-examination, which fact was not properly considered by the trial Court, however, the Trial Court has allowed the application, on payment of cost of Rs.1,500/-. The petitioners herein raised nearly 10 grounds, but none of the grounds was argued by the petitioners herein, except the one ground that the respondent herein was very much available in his native place and the same was informed to the trial Court whereas without ascertaining the said fact, the trial Court allowed the application with the cost of Rs.1,500/- and that is the main grievance.

5. The order of the trial Court is very much reasonable and the contentions of the petition and the counter affidavit are carefully considered and in the interest of justice, the petition is allowed, so the contention raised by both sides were considered and only with the view to protract the proceedings, the said petition was allowed, which does not require any interference by this forum, because the reasons stated by the petitioners and the respondent are not discussed and in no way the parties are prejudiced, since the trial Court has applied in the interest of justice because the case need not be prolonged any longer by the petitioners for his presence or absence at any nature and also to consider the rights of the parties, the said petition was allowed. The petitioners herein cannot have any grievance over the said order and only by preferring the civil revision petition, he has lot of inconvenience to the trial court, because he is receiving the cost at the earliest. After receiving the cost, the petitioners have no reason or merit in filing such civil revision petition. If there is bonafide on the side of the petitioners in preferring such petition after receiving



the cost, this Court also without keeping pending any longer this issue and a direction is given to the parties to proceed and co-operate before the trial Court for early disposal of the case.

6. In view of the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court cum
Judicial Magistrate Court,
Rameswaram, Ramanathapuram District.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.JEGADEESWARAN, Advocate (SR-48575[F] dated 20/02/2019

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SP-05.04.2019/3P-4C