



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.1665 of 2019

P.Kasthuri

... Petitioner/Petitioner/Plaintiff

-Vs-

S.Viswanathan

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 17.06.2019 passed by the I Additional Sub Judge, Trichy in nunumbered I.A.No. of 2019 in O.S.No.612 of 2018.

For Petitioner : Mr.T.Lenin Kumar

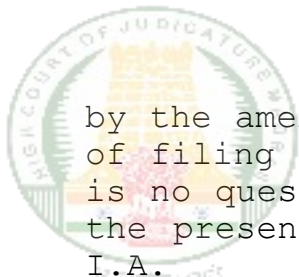
O R D E R

The civil revision petition has been filed challenging the order passed by the I Additional Sub Judge, Trichy in unnumbered I.A.No. of 2019 in O.S.No.612 of 2018, dated 17.06.2019.

2. The above Interlocutory Application has been filed by the revision petitioner herein to pass a final decree, since the defendant in the suit failed to file a written statement, in accordance with the amended provision of Order V Rule 1 (i) of C.P.C., which reads as follows:

"Provided further that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reason to be recorded in writing and on payment of such costs as the Court deem fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record."

By referring the above provision, the revision petitioner contended that the defendant is supposed to file a written statement. However, the defendant has failed to file a written statement within 120 days from the date of service of summon. Therefore, she filed the above application to pass a final decree. However, the above application was returned stating that ex-parte order passed in O.S.No.612 of 2018 was set aside and written statement also filed. According to the revision petitioner, even on the date of the ex-parte order dated 06.02.2019, the defendant failed to file the written statement. Therefore, he contended that



by the amended provision of Order V Rule 1 (i) of C.P.C., the right of filing of the written statement stand forfeited and hence, there is no question of filing a fresh written statement. Hence, he filed the present revision petition to direct the Registry to number the I.A.

3. Heard the learned counsel for the revision petitioner and perused the documents available on record.

4. In the present suit, summon was served to the defendant on 13.08.2018, but even on 06.02.2019, when the ex-parte order was passed, the defendant did not file a written statement, according to the revision petitioner. The defendant filed a petition to set aside the ex-parte order dated 06.02.2019 and the same was allowed on 17.06.2019 and further, he submits that along with the application, the defendant filed the written statement. When the ex-parte order was set aside and the written statement was taken on record, the main contention of the revision petitioner that the amended provision of Order V Rule 1 (i) of C.P.C., prohibits the defendant to file the written statement, after expiry of 120 days from the date of service of summon. No doubt in the present case, from the date of service of summon, 120 days period is over, but the question here is whether the amended provision of Order V Rule 1 (i) of C.P.C., will be applicable to the present case or not?

5. In the light of the Commercial Courts Act, the Order V Rule 1 (i) of C.P.C., has been amended and the proviso was inserted so as to enable the Commercial Courts in the commercial suits to forfeit the right of the defendant in filing the written statement beyond the period of 120 days from the date of receipt of the summon. In the present case, admittedly, the Court is not a Commercial Court as per the provisions of the Act. Further, the suit also has not been filed as a commercial suit. In such a view of the matter, the amended provision of Order V Rule 1 (i) of C.P.C., will not be applicable to the facts of the present case.

6. In view of the above, this Court does not find any material defect on the part of the Registry of the Court below in returning the unnumbered I.A. of 2019 in O.S.No.612 of 2018 filed by the revision petitioner herein. Hence, the Civil Revision Petition is dismissed. However, considering the fact that the present suit is of the year 2018 and the suit has been filed for recovery of money, based on the promissory note, this Court directs the Court below to dispose of the suit in O.S.No.612 of 2018 within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //



To

The I Additional Sub Judge,
Trichy.

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