

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.3462 of 2013

and

MP.No.1 of 2013

M/s.Kotak Mahindra Bank Ltd.,

Rep.by Vice President,

G.Ramachandran Srikanth,

I Floor, Ceebros Centre, No.39, Montieth Road,

Egmore, Chennai - 600 008.

... Petitioner

Vs.

1.B.K.Hemanth Kumar

2.Dr.K.Priyalatha

3.Rekha Prakash

4.S.Krishnan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, aggrieved by the fair and decreetal order dated 24.11.2011 passed in I.A.No.594 of 2011 in I.A.No.273 of 2011 in O.S.No.33 of 2008 on the file of the learned Principal Subordinate Judge, Salem.

For Petitioner : Mr.R.Imayavaramban

for M/s. Ramalingam Associates

For Respondents : No Appearance

ORDER

The second defendant is the revision petitioner herein.

2.The respondents herein filed the suit for partition of the schedule property and to allot the divided shares to the plaintiffs. According to the revision petitioner, the property has already been mortgaged with the petitioner's Kotak Mahindra Bank limited, who was arrayed as second defendant in the suit.

3.Pending suit, the respondents herein have not pressed the suit as against the 2nd defendant/petitioner herein. To that effect an endorsement has also been made in the suit and the suit was dismissed on 07.06.2010. Thereafter, the petitioner herein has filed an application in I.A.No.327 of 2010 to set

aside the above said order passed in the suit, which was allowed in favour of the petitioner herein on 09.12.2010 and the case was posted for filing of written statement on 01.03.2011. On that day, due to non-filing of the written statement, an ex-parte order was passed. Consequently, the petitioner herein has filed another I.A. No. 273 of 2011 to set aside the ex-parte order and the same was dismissed. According to the petitioner, the order passed in I.A.No.273 of 2011 was made to be passed due to an accidental slip in recording the date of hearing before the Court below. Thereupon, the revision petitioner filed an application in I.A.No.594 of 2011 under Section 151 of CPC to review the order passed in the above said Interlocutory application and the same was dismissed. Hence, the present Civil Revision Petition.

4. In view of the above, the order passed in I.A.No.327 of 2010, dismissing the suit as against the second defendant was set aside and the petitioner's status was restored as a party defendant in the suit. After restoration of the litigative status of the second defendant, the second defendant has not filed any written statement, inspite of due opportunities were given, hence, the petitioner was set ex-parte on 01.03.2011 and subsequently, petitioner has filed the above said I.A.No.273 of 2011 under Order IX and Rule 7 and Section 151 of CPC., to set aside the ex-parte order dated 01.03.2011 but the same was dismissed on an erroneous consideration without even looking into the order passed in I.A. No. 327 of 2010 and hence, the review application has been correctly filed by the petitioner. Such error is an apparent on the face of the records in I.A.No.327 of 2010, hence, subsequently, the petitioner filed the I.A.No.594 of 2011. Thus, this Court is of the considered view that the order passed in I.A.No.273 of 2011 is to be set aside and the Court below is directed to take the written statement of the petitioner herein/second defendant on file and frame necessary issues and to dispose of the same as expeditiously as possible. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Salem.

+2cc to M/s.Ramalingam Associates, SR.No.12127

AKM/17.03.2020/3P-4C/

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and
MP.No.1 of 2013



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