

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)Nos. 2346 & 2347 of 2018

1.Chinnasamy
2.Kumar
3.Madhureddy

...Petitioners in both CRPs

Vs.

1.Muniyammal
2.Munusamy

...Respondents in both CRPs

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.Nos. 1 of 2018 and 10 of 2018 in O.S.No. 30 of 2015 dated 12.02.2018 passed by the learned District Munsif Court-cum-Judicial Magistrate, Pennagaram.

For Petitioners in both CRPs : Mr.A.Ilaya Perumal

For Respondents in both CRPs: Mr.B. Vijay Kumar

COMMON ORDER

These two civil revision petitions have been filed by the defendants in O.S.No. 30 of 2015 challenging the order dated 12.02.2018 made in I.A.No. 1 of 2018 and I.A.No. 10 of 2018.

2. The suit is one for declaration and permanent injunction. Since the defendants failed to cross-examine the plaintiffs' witness, they were set *exparte* and an application under Order 9 Rule 7 was filed in I.A.No. 1 of 2018 seeking to set aside the *exparte* order. The Trial Court allowed the said application on 03.02.2018 on condition, the petitioners / defendants paid costs of Rs.1,000/- on or before 12.02.2018 and the further condition was imposed to the effect that the defendants must cross-examine the witness of the plaintiffs on 12.02.2018.

3. On 12.02.2018, it was brought to the notice of the Court that the cost imposed by the order dated 03.02.2018 was not paid and as such there was a non-compliance. The Trial Court dismissed the application in I.A.No. 1 of 2018 on the said date. However, it is found that the petitioners had filed an application in I.A.No. 10 of 2018 seeking extension of time by two days for payment of the costs. That application was dismissed by the Court and the order dated 12.02.2018 in I.A.No. 10 of 2018 reads as follows:-

“P.W.1 present. Cost not paid. Directed the

defendants to cross on P.W.1. The petitioner not obeyed the order of the Court. Hence, petition dismissed.”

4. I have heard Mr. A.Ilayaperumal, learned counsel for the petitioners and Mr.B.Vijayakumar, learned counsel for the respondents.

5. When the matter was listed on 01.12.2020, after hearing the counsels, I had directed the counsel for the petitioners to pay costs of Rs.5,000/- to the learned counsel for the respondents appearing in this Court so that the default may be condoned and the suit may be allowed to be contested on merits. Pursuant to my direction, the learned counsel for the petitioners has paid the cost of Rs.5,000/- to the counsel for the respondents appearing in this Court. It is needless to pointout that the Courts should be liberal in enlarging the time for compliance with the orders of the Court when the parties approached the court within the time granted seeking indulgence of extension of time by two days.

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6. I find that the Trial Court has adopted a dogmatic approach in dismissing the application for extension of time. The insensitivity shown by

the Trial Court in dismissing the application for extension of time without even ordering notice to the other side has resulted in the said suit being delayed by almost three years now. The Court must endeavour to adjudicate upon and dispose of the suit on merits than to take cover of technicalities and allow suits to proceed exparte.

6. This Court and Hon'ble Supreme Court have repeatedly pointed out the need for such liberal approach among Courts in matters of delay and in matters of extension of time. Unfortunately, the Trial Court, in this case, has not reflected the general opinion of the Hon'ble Supreme Court as well as this Court. Now that the defendants have paid a sum of Rs.5,000/- towards cost, the orders dated 12.02.2018 made in I.A.Nos. 1 of 2018 and 10 of 2018 will stand set aside. Both the revisions will stand allowed, I.A.No. 1 of 2018 will stand allowed. No costs.

7. Since the conditional order has been complied with within the extended time granted by this Court. The Trial Court is directed to post the suit for cross-examination of P.W.1 and proceed further in accordance with

law. It is made clear that the defendants shall co-operate with the Trial Court in disposal of the suit on merits at the earliest. Considering the fact that the suit has been delayed by two years because of the pendency of these revisions, the Trial Court is directed to dispose of the suit within eight months from the date of commencement of normal physical hearings in the Courts at Pennagaram.

14.12.2020

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Internet: Yes/No

Index: Yes/No

Speaking / Non-speaking.

To:

The District Munsif Court – Cum-Judicial Magistrate,
Pennagaram.

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R.SUBRAMANIAN, J.

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