

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.10.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

**CRP (NPD)No.1193 of 2014
and
MP.No.1 of 2014**

Sellammal

.. Petitioner/plaintiff/petitioner

vs

State of Tamil Nadu
rep by District Collector, Namakkal
Tiruchengode Main Road,
Silluvampatti Village
Namakkal TK & Town
Namakkal District.

..Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order dated 26.11.2013 in REP.No.115 of 2009 in O.S.No.528 of 2006 on the file of District Munsif, Namakkal.

For Petitioner

... Mr.S.Kalyanaraman

For Respondent

... Mr.Dev Narendran
Government Advocate (CS)

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the order passed by the District Munsif, Namakkal in REP.No.115 of 2009 in O.S.No.528 of 2006 dated 26.11.2013.

2. Heard Mr.S.Kalyanaraman, learned counsel for the petitioner and Mr.Dev Narendran, learned Government Advocate (Civil Side) for the respondent.

3. The learned counsel for the petitioner has submitted that in the previous round of litigation, the respondent herein had challenged the order of attachment made in REP.No.115 of 2009 in OS.No.528 of 2006 on the file of the District Munsif, Namakkal in CRP.No.2145 of 2010 before this court and this court by the order dated 20.09.2013 had set aside the order of attachment alone and remanded the matter to the trial court to dispose of the EP afresh. He further submitted that the learned District Munsif had misconstrued the order passed by this court in CRP.No.2145 of 2010 and set aside the exparte decree itself. He further submitted that the respondent herein had already filed

R.E.A.Nos.407 & 408 of 2010 in REP.No.115 of 2009 to set aside the exparte order passed in Execution Petition and to condone the delay in filing the said petition and the learned District Munsif has dismissed both the petitions by the order dated 07.08.2012 and suppressing the said fact, the respondent had filed CRP.No.2145 of 2010 and obtained an order to set aside the exparte order of attachment in E.P. He further submitted that since the learned District Munsif had already dismissed the R.E.A.Nos.407 and 408 of 2010, he should not have given an opportunity to the respondent for filing counter in E.P and therefore, he prayed to set aside the order passed by the learned District Munsif dated 26.11.2013 in R.E.P.No.115 of 2009.

4. Per contra, the learned Government Advocate appearing for the respondent has submitted that the respondent had filed CRP.No.2145 of 2010 to set aside the exparte order passed against him in R.E.P.No.115 of 2009 and this court after hearing both sides had allowed the said CRP by the order dated 29.09.2013 and remanded the matter to the lower court with a direction to dispose of the said E.P on merit and in obedience to the said order only, the learned District Munsif, Namakkal, had posted the matter for filing

counter. He further submitted that the learned District Munsif had not acted against the order passed by this court in CRP.No.2145 of 2020 and therefore, he prayed to dismiss this Civil Revision Petition.

5. A perusal of the typed set of papers filed by the petitioner shows that the respondent herein was set exparte in REP.No.115 of 2009 in O.S.No.520 of 2006 on the file of the District Munsif, Namakkal, by the order dated 05.03.2010 for not filing counter. As against the said order, the respondent herein had filed CRP No.2145 of 2010 before this court. This court by the order dated 20.09.2013 has allowed the said CRP and set aside the order passed by the lower court and the matter was remanded back to the District Munsif, Namakkal for fresh disposal of E.P on merits.

6. A perusal of the certified xerox copy of the execution petition and orders passed thereon in REP. No.115 of 2009 shows that on 26.11.2013, a staff of the District Munsif court, Namakkal, had made the following endorsement:-

*"High Court Orders received. CRP.2145/10 in
MP.No.1/10 is allowed. O.S.528/06 Decree set aside.*

Remanded back to the DMC, Namakkal .”

7. It appears that the court staff misconstrued the order of this court passed in CRP.No.2145/2010 as the decree itself has been set aside. Hence, the learned District Munsif has not accepted the said endorsement and he has applied his mind independently and he has passed the following order :-

“ In obedience to the orders of the Hon'ble High Court, Madras in CRP.No.2145 of 2010 and MP.No.1 of 2010, this case is adjourned for counter of respondent by 02.01.2014 (NFA)”

8. This Court is of the view that the aforesaid order passed by the learned District Munsif is fully in tune with the order passed by this court in CRP.No.2145 of 2010 dated 20.09.2013. According to the learned counsel for the petitioner, the respondent herein had obtained order in CRP.No.2145 of 2010 suppressing the fact that already the petitions which were filed by him in REA.Nos.407 & 408 of 2010 to set aside the exparte order passed in EP and to condone the delay in filing the said petition were dismissed by the learned District Munsif. Even if it is assumed that the respondent herein has suppressed the

fact that the petitions which were filed by him in REA.Nos.407 & 408 of 2010 to set aside the exparte order passed in E.P and to condone the delay in filing the said petition already dismissed by the learned District Munsif by the order dated 07.08.2010, even though the petitioner appeared through counsel in CRP.No.2145 of 2010, she has not brought to the knowledge of the court that the aforesaid REAs' were dismissed and that being so, it is not open to the petitioner to blame the District Munsif as he has acted against the order passed by this court in CRP.No.2145 of 2010. Therefore, this court does not find any irregularity or illegality in the order passed by the learned District Munsif dated 26.11.2013. Accordingly, this CRP is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Index: Yes/No
Speaking/Non-speaking Order
gv

05.10.2020

To

- 1.The District Collector, Namakkal
Tiruchengode Main Road,
Silluvampatti Village
Namakkal TK & Town
Namakkal District.



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P. RAJAMANICKAM,J.
gv



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