



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. (MD) .No.123 of 2020

Athima Munivar Samuthaya Trust
represented by its Trustees,
East Street,
Nagercoil,
Kanyakumari District.
1.S.Govindaswamy
2.P.Annadurai

... Petitioners/Petitioners/
Plaintiffs

Vs.

Stara

... Respondent/Responent/
Defendant

Prayer: The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the frequent returns dated 22.11.2019 passed in I.A.SR.No.4969 of 2019 in O.S.No.230 of 2013 on the file of the Principal Sub Court, Nagercoil.

For Petitioners : Mr.V.Meenakshisundaram
for Mr.R.Murugan

O R D E R

The civil revision petition has been filed as against the order of the trial Court in returning the application filed for deposit of the cost ordered by the first appellate Court in allowing the application to restore the suit.

2. It is noted that originally the suit in O.S.No.230 of 2013 was dismissed for default. Thereafter, an application was filed before the trial Court in I.A.No.176 of 2016 for restoration. The above application was initially dismissed by the trial Court on 04.06.2016. As against which, an appeal in C.M.A.No.17 of 2018 was filed before the Additional District and Sessions Court, Kanyakumari at Nagercoil. By judgment dated 04.08.2018, the first appellate Court allowed the appeal, thereby restored the suit on file, subject to payment of cost of Rs.25,000/- either to the respondent or his counsel on or before 06.09.2018. As against the imposition of the cost, a challenge was made before this Court in C.R.P.(MD).No.682 of 2019. This Court, by order dated 15.04.2019, confirmed the order of



the first appellate Court and dismissed the revision petition. However, this Court, directed the revision petitioners to pay the cost of Rs.25,000/- either to the respondent or his counsel on or before 30.04.2019. Thereafter, it is the contention of the petitioners that the order copy was made ready on 29.04.2019 and the copy was delivered on 30.04.2019. However, when the copy was made ready on the date ie., on 29.04.2019 itself, the Demand Draft was sent to the respondent by registered post. However, the same was returned with an endorsement that she is not inclined to receive the Demand Draft.

3. In view of the same, the petitioners filed an application in I.A.SR.No.4969 of 2019 in O.S.No.230 of 2013 before the trial Court to deposit the amount. The trial Court returned the papers, on the ground that the order of imposition of the cost not passed by the trial Court. Therefore, the petition is not maintainable.

4. On perusal of the records, the endorsement made by the trial Court, dated 23.10.2019 in I.A.SR.No.4969 of 2019, while returning the application reads as follows:

"The order was passed by the Hon'ble High Court. This Court has got no power to that order. The amount was also not ordered to be paid in this Court. As such this petition is not maintainable before this Court. Hence, returned."

5. Once again, it was resubmitted on 15.11.2019, stating the reasons as follows:

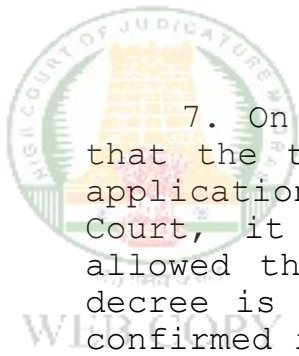
"It is humbly submitted that if amount is ordered to be paid to the defendant by the plaintiff if can be paid either directly or if the defendant refused to receive the same, it can be paid in to Court and for that as per Order 21 Rule 1 r/w. Section 151 of C.P.C., no direction is necessary from the Hon'ble High Court. Defects cured and resubmitted. Original D.D. is with the trust."

6. Again, on 22.11.2019, the trial Court had returned the application on the following grounds:

"1. No decree is passed by this Court in favour of the petitioner as stated in Order 21 Rule 1 of C.P.C., the said provision is not applicable to the present facts stated in the petition.

2. As specific time fixed by the Hon'ble High Court, the amount was neither paid nor deposited within that period. As such the Hon'ble High Court, alone has got jurisdiction to extend the time if the reasons stated by the petitioner is acceptable.

So the explanation stated in the re-submission more cannot be accepted. Hence, petition is returned since this Court has got no jurisdiction to extend the time."



7. On perusal of the above returns, this Court is of the view that the trial Court has returned the application with total non-application of mind. Once the decree is passed by the appellate Court, it merges with the trial Court. The appellate Court has allowed the C.M.A.No.17 of 2018 and restored the application. The decree is merged with the trial Court and the above order has been confirmed in the revision petition.

8. Such being the position, the trial Court observation that no decree is passed by this Court in favour of the petitioners and therefore, the amount cannot be deposited, is a total non-application of mind. Admittedly, in the C.R.P.(MD).No.682 of 2019, the time was extended till 30.04.2019, whereas the copy of the order was made ready on 29.04.2019 and delivered only on 30.04.2019. In the mean while, on 29.04.2019 itself, the Demand Draft was sent to the defendant which was refused to receive. Such being the position, the parties have no other go, except to file a petition before the trial Court, which is the fundamental principles of law, which is totally ignored by the trial Court. Accordingly, this Court directs the trial Court to number the application and thereafter restore the suit on file and decide the suit on merits.

9. With the above observation, the Civil Revision Petition is allowed. No costs.

10. The Registry is directed to return the original application in I.A.SR.No.4969 of 2019 to the petitioners for presentation before the trial Court and such application shall be represented within a period of one week from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

akv

To
The Principal Subordinate Judge, Nagercoil.

+1 CC to M/s.R.MURUGAN, Advocate (SR-3331[F] dated 28/01/2020)

C.R.P. (MD) .No.123 of 2020

29.01.2020

JMN(18.02.2020) 3P : 3C