



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A. (MD)No.576 of 2020

M.Raju ... Appellant/Petitioner/Defendant

vs.

C.Malairaja ...Respondent/Respondent/Plaintiff

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(d) of the Civil Procedure Code, against the order and executable decreetal order made in I.A.No.01 of 2019 in O.S.No.33 of 2016 on the file of the Principal District Judge, Theni dated 03.02.2020.

For Appellant : Mr.A.Saravanan

For Respondent : Mr.Mahadevan
for Mr.S.Balakarthick

ORDER

The defendant in O.S.No.33 of 2016 has come forward with this appeal.

2. The suit was laid for specific performance of a sale agreement said to have been executed by the defendant. After waiting for him to file written statement for closed to 1 ½ years, the learned trial Judge, set him as exparte and passed an ex-parte decree. Promptly, the defendant came forward with an application in I.A.No.152 of 2018 for condoning the delay of 264 days in filing his Interlocutory Application for setting aside the ex-parte decree. This petition was allowed and subsequently, the revision petitioner's application is taken on file as I.A.No.1 of 2019. This was allowed by the trial Court on the condition that the defendant shall pay a cost of Rs.1.50 lakhs. Aggrieved by the costs imposed, the defendant has approached this Court with this Civil Miscellaneous Appeal.

3. Heard both sides.

4. The learned counsel for the appellant submitted that since the costs was not paid within the time stipulated, I.A.No.1 of 2019 came to be dismissed. This is now under challenge.



5. The learned counsel for the appellant/defendant before the trial Court stated that the costs of Rs.1.50 lakhs appears to be a penalty and hence, the defendant could not pay the same.

6. The learned counsel for the respondent / plaintiff before the trial Court would submit that the suit was laid on 15.07.2016 that no written statement was filed till 20.02.2020 and hence, the petitioner was set ex-parte on that date and on 28.02.2018 an exparte decree was passed. Having consumed closed to 1 ½ years for filing his written statement, the appellant has not filed his written statement even along with his application to set aside the exparte decree. The learned counsel for the respondent submitted that in the meantime he has laid execution petition and the Court has also executed the sale deed for which purpose he has incurred expenses of Rs.1.50 lakhs.

7. It is apparent that the appellant/defendant is squatting on the indulgence that the Court has granted in. At the first instance he showed no interest to file written statement for closed to 18 months. As per the amendment made to Order 8 Rule 1 of the Civil Procedure Code, the outer limit is maximum of 90 days, though in terms of the judgment in **Salem Advocates Bar Association, Tamil Nadu vs. Union of India**, this time may be enlarged, where substantial reasons are shown. This has not happened.

8. As rightly contended by the learned counsel for the respondent, the appellant has not filed his written statement even now. His intentions are obvious. He only wants to drag on the proceedings endlessly and to tire the plaintiff. There is no need to emphasis that attitude such as this put the respondent/plaintiff to considerable procedural disadvantage. The law of procedure is the rule book of fairness. The Court shall handle it in such a way that procedural fairness is extended to both. It is apparent, the appellant herein seems to exploit the procedure and appears to be gaining an unfair advantage over the plaintiff, which the Court considers inappropriate.

9. On weighing all contentions, this Court now passes the following order:

(a) the costs amount is reduced from Rs.1.50 lakhs to Rs.1.15 lakhs, which the appellant herein shall pay to the plaintiff on or before 18.12.2020.

(b) alongside within such time, he has to file a written statement.

10. If any one of the conditions herein above indicated is not complied with, the appellant / defendant will forfeit his right of defence. Once the order is complied in the manner indicated above, the trial Court shall forthwith frame the issues and commence the trial latest by February, 2021 and conclude the same by June, 2021.



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11. In view of the above, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Theni

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.S.BALAKARTHICK, Advocate (SR-24740[F] dated 09/12/2020)

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07.12.2020

SS (CO)

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