



CRP.(PD).No.942/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.942/2019 & CMP.No.6147/2019

[Video Conferencing]

Sambandam

.. Petitioner

Vs.

1.K.Sambamurthy

2.P.Jothivel

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order passed by the District Munsif Cum Judicial Magistrate Court in I.A.No.517/2018 in I.A.No.155/2018 in O.S.No.2/2015 passed by the Hon'ble District Munsif cum Judicial Magistrate dated 10.01.2019 and restore the application in I.A.No.155/2018 and consequently extend the time for payment of cost and permit the petitioner to file his written statement and to contest the suit on merits.

For Petitioner : Mr.D.Govinda Reddy

For Respondents : No appearance



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ORDER

- (1) This Civil Revision Petition is filed by the revision petitioner/defendant in the Suit in O.S.No.2/2015 against the order in I.A.No.517/2018 in I.A.155/2018 in O.S.No.2/2015 dated 10.01.2019 on the file of the learned District Munsif cum Judicial Magistrate Court, Kattumannarkoil.
- (2) Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:
- (3) The respondents/plaintiffs herein have filed the Suit in O.S.No.2/2015 for permanent injunction restraining the revision petitioner/defendant from interfering with his peaceful possession and enjoyment of the Suit 'B' schedule. The revision petitioner/defendant was set *ex-parte* on 30.10.2015, since, he did not file the written statement within the time granted by the Lower Court. Thereafter, the Suit was proceeded and Exs.A1 to A5 were marked.



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(4) In the meanwhile, the revision petitioner/defendant filed an application to set aside the order setting him as *ex parte* in I.A.No.155/2018. The said application, by order dated 01.09.2018, was allowed on condition that the revision petitioner/defendant should pay a sum of Rs.1000/- to the respondents/plaintiffs on or before 20.09.2018. Since, no one appeared on behalf of the revision petitioner/defendant on 20.09.2018, the Lower Court dismissed I.A.No.155/2018 as the condition was not complied with. Thereafter, the revision petitioner/defendant filed another application in I.A.No.517/2018 in I.A.No.155/2018 to restore the order in I.A.No.155/2018 which was dismissed for non compliance of the condition. I.A.No.517/2018 was dismissed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil. Aggrieved by the same the revision petitioner/defendant has preferred the above Civil Revision Petition.

(5) The Lower Court on the earlier occasion considered that facts and materials placed and allowed the application in I.A.No.155/2018 on condition that the petitioner should pay a sum of Rs.1000/- on or before 20.09.2018.



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Since, the condition imposed by the Lower Court was not complied with, the Lower Court was of the view that allowing the subsequent application in I.A.No.517/2018 would result in varying the earlier order passed in I.A.No.155/2018. In other words, the Lower Court was of the view that entertaining the application in I.A.No.517/2018 will indirectly render the previous order passed in I.A.No.155/2018 ineffective and that the Court cannot set aside its own earlier order or render the earlier order passed by the Court ineffective. Further it is also stated by the Lower Court that after passing the conditional order this Court, became “*functus officio*” and therefore the final order passed in I.A.No.155/2018 on 20.09.2018 cannot be recalled.

- (7) The Lower Court was too technical. In the present case, the revision petitioner/defendant was ordered to pay a sum of Rs.1000/- on or before 20.09.2018 as condition precedent to set aside the order setting him *ex parte* in the Suit in O.S.No.2/2015. It is not the intention of the revision petitioner/defendant not to comply with the condition. Since, the revision petitioner/defendant was directed to pay a sum or Rs.1000/- on or before 20.09.2018,



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the revision petitioner/defendant prepared a memo on 24.09.2018 to the effect that he has complied with the order to pay a sum of Rs.1000/-. However, it is stated that on 24.09.2018, the counsel for the other side did not receive the amount when it was offered along with a memo.

- (8) The Lower Court did not consider the petitioner's willingness to pay the amount towards cost. The Lower Court, passed the order without considering the legal implications. The Court always has the inherent power to regularise things to render substantial justice. In the present case, the conditional order could not be complied with by the revision petitioner/defendant due to his illness. A memo was prepared within four days showing the intention to pay cost as directed by the Lower Court. In such circumstances entertaining the subsequent petition in I.A.No.517/2018 can never be treated as one intended to override the earlier order. The approach of the Lower Court cannot be appreciated and this Court is unable to sustain the order of the Lower Court on any equitable or moral principles.



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The learned counsel for the revision petitioner/defendant is unable to confirm whether payment was made or not? If not paid, the learned counsel for the respondent, undertakes to make payment of the sum of Rs.1000/- either to the counsel or to the respondent directly within the period of two weeks from the date of receipt of a copy of the order. In case the respondent refuses to receive the amount, the sum shall be deposited in Court to the credit of the Suit.

- (10) In the result, the Civil Revision Petition is **allowed**, recording the undertaking given by the revision petitioner/defendant. If he fails to make payment as per his undertaking now before this Court, the Civil Revision Petition stands **dismissed**. The order of Lower Court challenged in this Civil Revision Petition shall revive. No costs. Consequently, connected miscellaneous petition is closed.

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cda
Internet : Yes

To
1.The District Munsif Cum Judicial Magistrate Court,
Kattumannarkoil.



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S.S.SUNDAR, J.,

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