



C.R.P. (NPD) No. 1285 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (NPD) No.1285 of 2019
and C.M.P. No.8410 of 2019

P.G.Murugesan

...Petitioner

Versus

S.Premavathi
Represented by her general power agent:
Kumaravel

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Additional District Judge, Dharmapuri, dated 26.10.2017 in I.A. No.16 of 2017 in I.A. No.13 of 2016 in O.S. No.10 of 2014.

For Petitioner : Mr. P.Valliappan

For Respondent : Ms. Zeenath Begum

ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Judge, Dharmapuri in I.A. No.16 of 2017 in I.A. No.13 of 2016 in O.S. No.10 of 2014.



2. The revision petitioner is the defendant in the suit in O.S. No.10 of 2014. The respondent herein as plaintiff filed a suit in O.S. No.10 of 2014 on the file of Additional District Court, Dharmapuri, for recovery of a sum of Rs.17,62,123/- with subsequent interest at the rate of 24% from the date of the suit till the date of realization and for awarding cost.

3. After filing of written statement, the suit came to be decreed *ex parte* on 10.06.2015. Therefore, an application under Order 9 Rule 13 C.P.C. was filed by the revision petitioner in I.A. No.13 of 2016 to set aside the *ex parte* decree. It is admitted that the said application was filed without any delay. However, the application filed by the revision petitioner under Order 9 Rule 13 C.P.C. was dismissed for default on 28.07.2016. The petitioner filed an application to restore the petition filed under Order 9 Rule 13 C.P.C. with a delay of 30 days. The said application in I.A. No.16 of 2017 was allowed by the lower Court on condition that the revision petitioner should deposit a sum of Rs.4,00,000/-. Aggrieved by the same, this Civil Revision Petition is preferred by the defendant in the suit.

4. Learned counsel for the petitioner submitted that there was no delay in filing the petition under Order 9 Rule 13 C.P.C. and that the delay was only in



C.R.P. (NPD) No. 1285 of 2019

filing a petition to restore the application which is due to an accident. It is stated in the affidavit filed in support of the petition that the petitioner was taking treatment for the grievous injury sustained by him pursuant to an accident and therefore, he could not contact his counsel to know about the stage of his case.

5. Though the reasons stated by the petitioner is disputed by the plaintiff in the suit by filing detailed counter affidavit, no reasons have been stated by the lower Court to disbelieve the statement of the petitioner regarding reason for the delay. The petitioner has filed a petition to set aside the *ex parte* decree without any delay. However, the delay of 30 days in filing the petition to restore the petition filed under Order 9 Rule 13 C.P.C. was condoned on condition that the petitioner shall deposit a sum of Rs.4,00,000/- to the credit of the suit. No doubt the lower Court can allow the application on cost if the delay has caused some serious prejudice or untold hardship to the other side on account of the delay. In this case, the petition was allowed by imposing onerous condition to deposit almost 1/4th for the amount of which the suit itself was laid. If the defendant is unable to pay the said amount, it is consequential that the petitioner will have to suffer a decree as prayed for without there being trial. The Hon'ble Supreme Court has dealt with similar circumstances and observed



C.R.P. (NPD) No. 1285 of 2019

that such onerous conditions are likely to end the litigation without giving sufficient or a fair opportunity to the defendant or the plaintiff either to defend or to prosecute the suit.

6. As a result this Civil Revision Petition is allowed with a direction to the revision petitioner to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) as costs, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. The application in I.A. No.16 of 2017 in I.A. No.13 of 2016 in O.S. No.10 of 2004 stands allowed. The learned Additional District Judge, Dharmapuri, is directed to dispose of the suit as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

13.12.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn



C.R.P. (NPD) No. 1285 of 2019

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Copy to:

The Additional District Judge, Dharmapuri.



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C.R.P. (NPD) No. 1285 of 2019

S.S.SUNDAR, J .,

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C.R.P. (NPD) No.1285 of 2019

13.12.2021