

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

C.R.P. (NPD) No.2188 of 2019

R.Prabu

... Revision Petitioner

Vs.

K.Krishnan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the dated 28.02.2019 made in C.M.A. No.3 of 2018 on the file of Principal District Judge, Vellore, Vellore District, confirming the order of the learned Subordinate Judge, Vellore, dated 03.07.2018 made in I.A.No.371 of 2016 in O.S.No.174 of 2005.

For Petitioner : Mr.P.Chandrasekar

For Respondent : Ms.B.Sindhiya
for M/s.G.Vijayakumar

ORDER

(Through Video Conferencing)

This Civil Revision Petition is filed to set aside the judgment in C.M.A.No.3 of 2018, by the learned Principal District Judge, Vellore, on 28.02.2019, confirming the order of the learned Principal Subordinate Judge, Vellore, in I.A.No.371 of 2016 in O.S.No.174 of 2005, passed on 03.07.2018.

2.Learned counsel for the petitioner submitted that the petitioner filed the suit for specific performance in respect of a sale agreement dated 09.08.2002. When the matter was pending for cross-examination, the petitioner was not able to appear. On 08.09.2016, instead of closing the petitioner's evidence for his non-appearance and proceeding further with the defendant's evidence, the learned Judge has dismissed the suit for default. Therefore, he filed a petition for restoring the suit, which was dismissed on 03.07.2018. The learned Subordinate Judge, without considering the merits of the case, dismissed the restoration petition filed in I.A.No.371 of 2016. The appeal filed in C.M.A.No.3 of 2018 was also dismissed. Against the

said dismissal order, this Civil Revision Petition is preferred.

3.The learned counsel for the petitioner further submitted that he produced the B-Diary Extract of the suit from 06.06.2007 till the case was dismissed for default on 08.09.2016. The Diary Extract shows that the petitioner was examined-in-chief on 06.11.2014 and Exs.A1 to A7 were marked and the case was adjourned for cross-examination of P.W.1 to 13.11.2014. From 13.11.2014, till 08.09.2016, the case was adjourned on several dates for cross-examination. It is submitted by the learned counsel for the petitioner that the cross-examination was deferred only at the request of the defendant/respondent. Therefore, the dismissal of the suit for the failure of the petitioner to appear on one particular date is not correct.

4.In response, the learned counsel for the respondent submitted that the Diary Extract does not reflect the presence of the petitioner and that case was adjourned at the instance of the defendant. The orders of the learned trial Judge and the learned Appellate Judge show that it was the petitioner, who has not appeared before the Court for facing cross-examination. Therefore, the petition for restoring the suit was rightly

dismissed by the Court, as also confirmed by the Appellate Judge. By so submitting, the learned counsel prayed for dismissal of this Civil Revision Petition.

5. Considered the rival submissions and perused the records.

6.A perusal of the B-Diary Extract shows that the suit was once dismissed for default on 04.02.2010 and then, it was restored. On 20.01.2014, the defendant was set *ex parte* and the petition filed under Order 9 Rule 7 of CPC to set aside the *ex parte* order, was allowed. As already illustrated, the petitioner was examined as P.W.1 on 06.11.2014 and the case was adjourned to 13.11.2014 to 08.09.2016 on several dates for the purpose of cross-examination of P.W.1. It is seen from the Diary Extract that the adjudication order of the learned Subordinate Judge is “Cross of P.W.1 at request adjourned.” This adjudication order does not reflect as to whether the petitioner was present or the respondent was present and at whose request, the cross-examination was adjourned. It is a nebulous order giving room for different interpretations. The learned trial Judge ought to have clearly recorded in the adjudication order as to, at

whose instance, the cross-examination was adjourned. When that is not recorded, it can be interpreted in both ways, that the cross-examination was adjourned either at the request of the petitioner or at the request of the respondent.

7.In this view of the matter and considering the fact that the parties must be given an opportunity to present their case and contest the matter and it is always not desirable to dispose the matter *ex parte*, this Court opines that the petitioner should be given an opportunity to present his case by submitting himself to cross-examination and producing his witnesses.

8.In this view of the matter, the judgment in C.M.A.No.3 of 2018, confirming the order in I.A.No.371 of 2016 in O.S.No.174 of 2005, is set aside and this Civil Revision Petition is allowed. The suit is directed to be restored. P.W.1 should be present before the Court on the date fixed by the learned Subordinate Judge, Vellore, and cross-examination should be completed on a day-to-day basis and thereafter, the plaintiff's side witnesses must be examined and the defendant's side witnesses must be examined and the case must be disposed as expeditiously as possible, preferably within a

period of three months from the date of receipt of a copy of this order. No costs.

21.09.2021

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

1.The Principal District Judge,
Vellore.

2.The Subordinate Judge,
Vellore, Vellore District.



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G. CHANDRASEKHARAN, J.

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21.09.2021

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