

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.859 of 2017 and
CMP.No.4237 of 2017

1.Bagyalakshmi
2.S.Arul kumar
3.Latha Magesh
4.S.Jayaprakash

..Petitioners

Vs.

Kanagaraj

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 16.02.2017 passed in IA.No.102 of 2017 in OS.No.760 of 2009 by the IV Additional District Judge, Coimbatore.

For Petitioners : M/s.V.S.Usha Rani

For Respondent : Mr.C.R.Prasannan

ORDER

This civil revision petition is filed as against the fair and

final order dated 16.02.2017 passed in IA.No.102 of 2017 in OS.No.760 of 2009 by the IV Additional District Judge, Coimbatore thereby dismissed the petition to set aside the exparte order.

2. The petitioners are the defendants. The respondent filed suit for specific performance. The respondent examined PW1 and when the suit was posted for cross examination on 07.02.2017, the petitioners filed petition for adjournment seeking two weeks time for cross examination of PW1. The same was allowed and again the matter was posted on 09.02.2017 for cross examination. On the date also, the petitioners filed petition for seeking adjournment and the same was dismissed. On the same day, the petitioners were set exparte. Immediately, the petitioners filed petition to set aside the exparte order. On receipt of the same, the court below numbered the same as IA.No.102 of 2017 and thereafter without even ordering notice, the court below dismissed the petition for the reason that the petitioners filed affidavit in support of the petition stating that already petitioners filed civil revision petition in CRP.No.4587 of 2013 before this Court and due to pendency of the said petition, the court below is barred from proceeding during the pendency of the civil revision petition.

3. On perusal of the records, the civil revision petition was filed by the petitioners as against the dismissal of the implead petition in IA.No.381 of 2013 in OS.No.760 of 2009. The said civil revision petition was also dismissed by this Court by order dated 03.01.2017. Whereas the petitioners filed petition to set aside the exparte order only on 14.02.2017 stating that the civil revision petition is pending before this Court and the court below is barred from proceeding during the pendency of the civil revision petition. Therefore, the petitioners filed false affidavit before the court below as if the civil revision petition is pending. However, the court below dismissed the petition without ordering notice and without giving opportunity to the petitioners.

4. Considering the above, the order dated 16.02.2017 passed in IA.No.102 of 2017 in OS.No.760 of 2009 by the IV Additional District Judge, Coimbatore is set aside and the matter is remanded back to the trial court for fresh consideration and to pass orders, after giving opportunity to the petitioners as well as the respondent, on merits and in accordance with law within a period of four weeks from the date of receipt of copy of this order.

5. Accordingly, this civil revision petition is allowed.

Consequently, connected miscellaneous petition is closed. No order as to costs.

31.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

The IV Additional District Judge,
Coimbatore.



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G.K.ILANTHIRAIYAN,J.

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