



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P (MD) (NPD)No.2623 of 2012

M.Sahul Hameed

... Revision Petitioner/Appellant/Petitioner/
Plaintiff

VS

P.Kanagaraj

...Revision Respondent/Respondent/Respondent /
Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order passed by the Principal District Court, Tiruchirappalli made in C.M.A.No.32 of 2011, dated 13.08.2012, confirming the order passed in I.A.No.419 of 2008 in O.S.No.671 of 2002, dated 17.06.2009 on the file of I-Additional Sub Court, Tiruchirappalli.

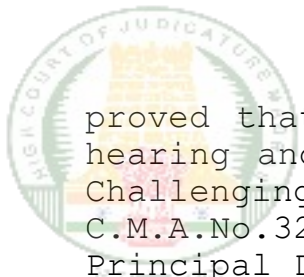
For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.V.Ramakrishnan

ORDER

The Civil Revision Petition is filed against the order passed by the learned Principal District Judge, made in C.M.A.No.32 of 2011, dated 13.08.2012, confirming the order passed by the learned I-Additional Subordinate Judge, in I.A.No.419 of 2008 in O.S.No.671 of 2002, dated 17.06.2009.

2.The revision petitioner, who is the plaintiff in the suit, had filed a suit in O.S.No.671 of 2002, on the file of the I-Additional Sub Court, Tiruchirappalli, for the relief of specific performance. The revision petitioner had allowed the suit to go for default on 21.01.2006. To restore the suit, he had filed I.A.No.136 of 2006 with a petition to condone the delay in filing the petition to restore the suit. The delay was condoned and the suit was restored to file. Even thereafter, the revision petitioner had been taking several adjournments without prosecuting the suit. Finally, the suit was posted in the list for trial on 03.03.2008. On the said date, the revision petitioner did not appear and had filed a petition for adjournment through the Advocate's Clerk stating that he had gone for a pilgrimage to Haj. The said adjournment petition was rejected on the ground that the reasons stated was not genuine and there was no proof for the same and the suit was once again dismissed for default. The present I.A.No.419 of 2008 is filed for restoration of the suit. The trial Court had dismissed the said application on the ground that the revision petitioner had not



proved that he was away on the date, when the suit was posted for hearing and he had not filed any document in support of the same. Challenging the same, the revision petitioner had preferred C.M.A.No.32 of 2011, which was also dismissed by the learned Principal District Judge, Tiruchirappalli, stating that the revision petitioner had neither produced any document to show that he went to Ajmeer Khaja Durga at Rajasthan nor to Haj, as mentioned in the affidavit.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

4.The Courts below had concurrently held that the reasons stated by the revision petitioner were not proved and the same were not genuine and dismissed the same. The suit itself is one being for specific performance, wherein, the revision petitioner is seeking for an equitable relief, is expected to come to the Court with clean hands. While so, the revision petitioner had allowed the suit to be dismissed for default twice and the reasons furnished by him for the absence are not substantiated by any evidence and hence, the Courts below had rightly dismissed the same and this Court finds no merit to interfere with the same.

5.In view of the above, the Civil Revision Petition stands dismissed, confirming the order passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ps

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Court,
Tiruchirappalli.



2.The I-Additional Sub Court,
Tiruchirappalli.

3.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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VB (09.03.2021) 3P 5C