



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD).No.441 of 2021 and
CMP(MD).No. 2387 of 2021

M. Somasundaram : Petitioner

Vs.

M. Kasthuri : Respondent

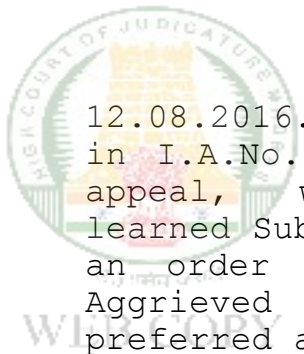
PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the dismissal of CMA.No. 9 of 2018 dated 11.11.2020 on the file of the I Additional District Judge, Madurai against the order passed in I.A.No. 82 of 2017 in A.S.No. 207 of 2009, dated 21.07.2017, on the file of the Sub Court, Madurai. (Melur Camp)

For petitioner : Mr.P.Shanmugam

ORDER

This revision is directed against the order passed in C.M.A.No.9 of 2018, dated 11.11.2020 on the file of the I Additional District Court, Madurai confirming the order passed in I.A.No.82 of 2017 in A.S.No.207 of 2009, dated 21.07.2017 on the file of the I Additional Subordinate Court, Madurai (Melur Camp).

2. The revision petitioner is the defendant and the respondent / plaintiff has filed the above suit in O.S.No.250 of 2006 for recovery of possession and for recovery of arrears of rent and for damages. The learned District Munsif, Melur, after trial has passed the Judgment dated 28.07.2009 directing the revision petitioner / defendant to hand over the possession of the suit property to the respondent / plaintiff, within a period of two months from the date of decree and to pay a sum of Rs.26,385/- towards arrears of rent and also to pay Rs.5,100/- towards rent from September 2006 to November 2006 with interest. Aggrieved by the Judgment, the revision petitioner / defendant has preferred an appeal in A.S.No. 207 of 2009 on the file of the Sub Court, Melur at Madurai and that appeal was dismissed for non prosecution on



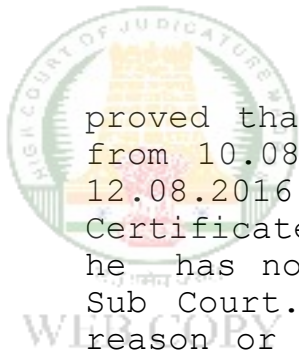
12.08.2016. The revision petitioner has then filed an application in I.A.No. 82 of 2017 under Order 41 Rule 19 CPC to restore the appeal, which was dismissed for default on 12.08.2016 and the learned Subordinate Judge, after conducting the enquiry, has passed an order dated 21.07.2017 dismissing the restoration petition. Aggrieved by the said dismissal, the revision petitioner has preferred an appeal in CMA.No. 9 of 2018 on the file of the learned I Additional District Court, Madurai. Upon perusing the materials and hearing the arguments of both sides, the learned I Additional District Judge, has passed the impugned order dated 11.11.2020 dismissing the appeal. Not satisfied with the dismissal of the appeal, the revision petitioner has filed the present revision petition.

3. The petitioner in his affidavit filed in support of the petition in I.A.No. 82 of 2017 has alleged that he was suffering from viral fever and acute knee pain from 10.08.2016 and he had to take complete bed rest as per the advice of the Medical Officer attending him, that therefore, he could not attend the Court on 12.08.2016, that his failure to attend the Court on that day is neither wilful nor wanton and that he will be put to irreparable loss and hardship, if the appeal is not restored.

4. The learned Subordinate Judge in his order has specifically observed that though the petitioner has alleged that he was suffering from viral fever and acute knee pain from 10.08.2016, he has not produced any material or evidence to prove the same and that his counsel alone had to appear and argue the appeal and as such, the presence of the petitioner was not at all necessary. The learned Appellate Judge, in his order, has observed that the petitioner has not only accused the other side but also the Court in the memorandum of appeal for the pendency of the appeal for the past seven years, that there is no bonafide attitude on the part of the petitioner in conducting the case, that though he has stated in the Appeal Memorandum that the Advocates in Tamil Nadu and Pondicherry were Boycotting the Courts during the relevant period, he has not pleaded the same in his affidavit and that the intention of the petitioner is only to keep the appeal pending for ever. Admittedly, the respondent / landlord has filed the suit in the year 2006 and obtained decree for possession on 28.07.2009, that the appeal in A.S.No. 207 of 2009 was filed in the year 2009, and the same has been pending for more than 7 years and that thereafter, the Appeal Suit was ordered to be dismissed for default.

5. According to the revision petitioner, the respondent has laid the execution petition for executing the decree dated 28.07.2009 and that the Court has already ordered for delivery and that therefore, stay has to be granted till the disposal of the revision.

6. As rightly observed by the learned Subordinate Judge and by the learned Additional District Judge, the petitioner has not



proved that he was suffering from Viral fever and acute Knee pain from 10.08.2016 and that is why he could not attend the Court on 12.08.2016. Though the petitioner has produced the Medical Certificate dated 24.08.2016 through Additional typed set of papers, he has not shown as to why the same was not exhibited before the Sub Court. Moreover, the petitioner has not canvassed any other reason or explanation for the non appearance of their Advocate and to advance the arguments in the appeal. The respondent / plaintiff though obtained the decree as early as on 28.07.2009, is still unable to realize the fruits of the decree.

7. Considering the above, as rightly observed by the Courts below, the petitioner has been attempting to protract the proceedings and hence, the decision of the learned I Additional District Judge, Madurai confirming the order of the learned Subordinate Judge, Melur at Madurai, dismissing the restoration application cannot be found fault with and hence, this Court is not inclined to admit the revision.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1. I Additional District Judge, Madurai.
2. The Sub Court, Madurai.

C.R.P(MD).No.441 of 2021 and
CMP(MD).No. 2387 of 2021

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