



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2021

Pronounced on : 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (PD) (MD) .No.756 of 2020

and

C.M.P (MD) No.5063 of 2020

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The Tamilnadu Industrial Investment Corporation Limited represented by its Branch Manager,
K.R.C.Building,
33, Promenade Road, Cantonment,
Tiruchy.

: Petitioner/Respondent/
Respondent/Defendant

Vs.

Seetha Nithyanandam
represented by her Power agent Gnanam.

: Respondent/Appellant/
Petitioner/ Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order and Decree dated 13.12.2019, passed in C.M.A No.5 of 2015 on the file of Principal Additional Sub-Court, Tiruchy by reversing the Order and Decree dated 13.02.2015, passed in I.A.No.1199 of 2014 in O.S.No.1269 of 2004 on the file of the Principal District Munsif Court, Tiruchy.

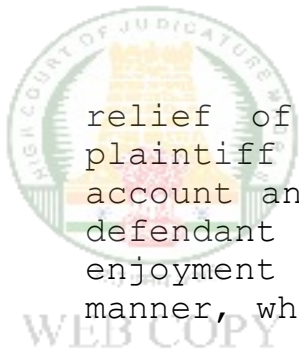
For Petitioner : Mr.R.Saravanan

For Respondent : Mr.M.Kanaga Sabai

ORDER

The Civil Revision Petition is directed against the order passed in C.M.A.No.5 of 2015, dated 13.12.2019, on the file of the Ist Additional Sub-ordinate Court Tiruchirapalli, reversing the fair and decreetal order passed in I.A.No.1199 of 2014, in O.S.No.1269 of 2004, dated 13.02.2015, on the file of the Principal District Munsif Court, Tiruchirapalli, in dismissing the petition filed under Order 9 Rule 9 of the CPC.

2.The revision petitioner is the respondent/defendant. The respondent, who is the appellant/plaintiff, has laid a suit in O.S.No.1269 of 2004, against the revision petitioner claiming the



relief of declaration that there is no liability due by the plaintiff or her predecessors-in-title to the defendant on any account and for consequential permanent injunction restraining the defendant and his men from interfering with the possession and enjoyment of the plaintiff in respect of the suit property in any manner, whatsoever, either by taking possession or otherwise.

3.The respondent/defendant has filed a written statement and was contesting the suit.

4.When the suit was posted for trial, the plaintiff has not chosen to proceed with the trial and as she was called absent and as there was no representation for her, the suit was ordered to be dismissed for default, vide Judgment and Decree, dated 13.06.2012. The plaintiff has thereafter, filed a petition in I.A.No.1199 of 2014, under Order 9 Rule 9 CPC, to restore the suit which was dismissed for default on 13.06.2012.

5.The learned District Munsif, after enquiry, has passed an order, dated 13.02.2015, dismissing the said petition. Aggrieved by the said order of dismissal, the plaintiff has preferred an appeal in C.M.A.No.5 of 2015 and the learned Additional Sub-Judge, upon considering the materials produced and on hearing the arguments of both sides, has passed the impugned order, dated 13.12.2019, allowing the appeal and thereby setting aside the fair and decretal order passed in I.A.No.1199 of 2014, dated 13.02.2015 and consequently allowed the petition filed under Order 9 Rule 9 CPC. Challenging the said order, the defendant has come forward with the present revision petition.

6.The plaintiff has filed the above suit through her power agent and she is prosecuting the proceedings including the present revision through the same power agent. It is evident from the records that the power agent of the plaintiff has filed the affidavit in respect of the petition in I.A.No.1199 of 2004, filed under Order 9 Rule 9 CPC and whereunder, she has stated that when the suit has been posted in the list for trial on 13.06.2012, she underwent a major heart surgery at Chennai and the Doctors who treated her asked her to take complete rest for six months, that she was advised not to leave Chennai for stipulated months and hence she could not meet her Advocate to give necessary instructions and that after return from Chennai, she met her Advocate and came to know that the suit was dismissed for default.

7.As rightly contended by the defendant's side, even assuming for argument sake that the power agent had undergone heart surgery and was taking treatment, there was no reason or explanation, as to why the principal (plaintiff) has not chosen to appear before the Court on 13.06.2012. No doubt, the plaintiff has produced a certificate given by Dr.M.Balasubramaniam of Kauvery Hospital,



Trichy. But, even according to the plaintiff, the power agent had undergone a major heart surgery and was taking treatment at Chennai. Admittedly, the plaintiff has not produced any certificate or medical records to show that the power agent had undergone heart surgery and was taking treatment at Chennai.

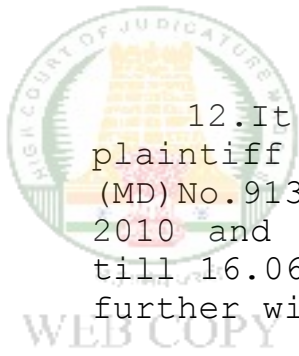
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8.As rightly observed by the learned District Munsif, the Consultant General Physician gave Ex.P1 certificate and that is not sufficient to prove the petitioner's ailment for filing an application filed under Order 9 Rule 9 CPC. The applicant has to satisfy the Court that there was sufficient cause for her non-appearance when the suit was called on for hearing.

9.In the case on hand, as already pointed out, the only reason canvassed is that the power agent was taking treatment after a heart surgery and as already pointed out, she has not produced any evidence to substantiate the same. Moreover, the principal of the power agent, who is the plaintiff of the above suit, has not even shown any reason or explanation for her non-appearance and she has no-where whispered that she was prevented by sufficient cause from appearing on 13.06.2012.

10.It is not in dispute that the above suit was dismissed for default previously on 01.10.2009, that the plaintiff has filed a petition in I.A.No.91 of 2010, to restore the suit and the said petition was ordered to be allowed on payment of costs. As rightly pointed out by the learned Counsel for the defendant, the affidavit filed in support of the petition in I.A.No.91 of 2010, under Order 9 Rule 9 CPC to restore the suit which was dismissed for default on 01.10.2009, was filed by the plaintiff herself alleging that she fell ill and could not present in the Court on the hearing date. But, now after the dismissal of the suit again on 13.06.2012, the power agent has filed an affidavit stating that she was not well and hence she could not appear on that day.

11.The main contention of the defendant is that the defendant Corporation which has got right to take possession of the collateral security under Section 29 of the State Financial Corporation Act, had already taken possession of the suit property on 18.12.2009, that the defendant fixed the public auction on 24.02.2010, that the plaintiff after coming to know about the same, has filed a petition in I.A.No.144 of 2010, seeking temporary injunction restraining the defendant from bringing the property for sale in auction till the disposal of the restoration petition in I.A.No.91 of 2010, that the defendant has filed a counter statement stating that the property was sold in public auction on 24.02.2010 itself and the possession was also handed over to the highest bidder one Syed Mohammed and that since the plaintiff was out of possession, after enquiry, the petition in I.A.No.144 of 2010, came to be dismissed.



12.It is the further contention of the defendant that the plaintiff has then filed a Writ Petition before this Court in W.P (MD)No.9139 of 2010, suppressing the order passed in I.A.No.144 of 2010 and this Court had granted an order of interim injunction till 16.06.2010 and that thereafter, the plaintiff did not proceed further with the case and hence the same was dismissed.

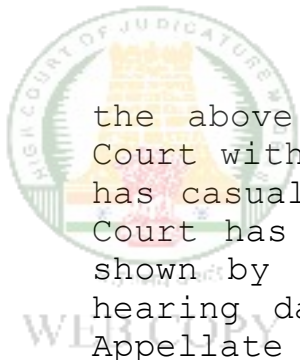
13.It is evident from the records that this Court in W.P(MD) No.9139 of 2010, has passed an order, dated 01.04.2019, holding that the Writ Petition is of the year 2010 and that the petitioner is not interested in prosecuting the Writ Petition, dismissed the same for default. The defendant has produced the stay order passed by this Court and also the order passed in I.A.No.144 of 2010, under Ex.R1 and R2 respectively.

14.The learned District Munsif, has rightly observed that a perusal of the records would reveal that the plaintiff was not in possession and enjoyment of the suit property, that the plaintiff has not produced any records to show that appeal is pending against Ex.R2 order and that the petition under Order 9 Rule 9 CPC has been filed with an oblique motive.

15.The Appellate Court without referring the above aspects, by simply observing that the documents Ex.R1 and R2 are not having any connection or relevancy with the application under Order 9 Rule 9 CPC, that the plaintiff has filed Ex.P1 to show that she was not well at that time and that since she has filed the petition within the period stipulated, she should be given an opportunity to prosecute the suit, allowed the appeal. The approach of the learned Appellate Court is completely erroneous and not in accordance with law.

16.When the plaintiff has filed the suit against the creditor of her predecessors-in-title to protect the possession of the suit property and when the defendant has produced ample evidence to show that after the dismissal of the suit for the first time on 01.10.2009, possession was taken on 18.12.2009, invoking Section 29 of the State Finance Corporation Act, that the property was sold in public auction on 24.02.2010, that the acution sale was confirmed on 22.03.2010, that sale deed was executed in favour of the highest bidder Syed Mohammed on 25.05.2010 and possession was also handed over to him, that the plaintiff's application I.A.No.144 of 2010 for temporary injunction was dismissed on 11.06.2010, that though the suit was restored to file as per the order passed in I.A.No.91 of 2010, the plaintiff allowed the suit to be dismissed for default again on 13.06.2012.

17.Considering the above sequence of events, it is clear that the plaintiff with an ulterior motive and with evil intention to keep the proceedings pending and to protract the same, has filed



the above petition under Order 9 Rule 9 CPC and the Appellate Court without considering the above aspects in proper prospective, has casually and mechanically, allowed the appeal. The Appellate Court has not even observed that it was satisfied with the cause shown by the plaintiff for her non-appearance on the particular hearing date. Hence this Court decides that the order of the Appellate Judge is liable to be set aside and is set aside.

18.In the result, the Civil Revision Petition is allowed and the fair and decreetal order passed in C.M.A(MD)No.5 of 2015, dated 13.12.2019 on the file of the Additional Sub-Court, Tiruchirapalli, is set aside and the fair and decreetal passed in I.A.No.1199 of 2014 in O.S.No.1269 of 2004, dated 13.02.2015 on the file of Principal District Munsif Court, Tiruchy stands restored. Consequently, the connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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 Munsif, Tiruchy.

2.The Principal Additional Sub-Judge, Tiruchy .

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-32436[F] dated 25/10/2021)

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