



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2055 of 2021
and
C.M.P. (MD) No.10985 of 2021

Mohaideen Pitchai

.. Petitioner/Respondent/
Plaintiff

-VS-

Dr.Rajalakshmi

.. Respondent/Petitioner/
5th Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.170 of 2017 dated 10.03.2021 on the file of the Additional District Court (Fast Track), Tenkasi.

For Petitioner : Mr.K.K.Ramakrishnan

ORDER

The revision petitioner is the plaintiff. The plaintiff has filed this revision challenging the order, dated 10.03.2021, passed in I.A.No.1 of 2019 in O.S.No.170 of 2017 by the learned Additional District Judge (FTC), Tenkasi, in and by which, the learned Judge has set aside the exparte decree passed against the 5th defendant/respondent herein.

2.The brief facts are as follows:-

2.1.The revision petitioner had filed the suit in O.S.No.170 of 2017 against the defendants for a declaration that five Sale Deeds executed on the file of the Sub Registrar Office, Senkottai, would not bind the revision petitioner and for a declaration that the suit property belonged to the plaintiff and consequentially for an injunction restraining the 5th defendant/respondent herein, his men or agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

3.Summons was served on the respondent/5th defendant on 13.01.2018 to appear before the Court on 22.01.2018. Since the respondent had failed to appear before the Court on the said date, she was set exparte. Thereafter, on 11.04.2018, the 1st defendant had filed his written statement. Since defendants 2 to 4 have not filed their written statement, they were also set exparte on the



ground of the non-filing of their written statement. Issues were framed in the suit on 03.08.2019 and from 17.09.2019, the suit was being adjourned for trial till 14.11.2019 when the plaintiff had filed the proof affidavit in lieu of chief examination. Thereafter, the matter was adjourned for the cross examination by the 1st defendant. At this juncture, the impugned application came to be filed.

4.The respondent/5th defendant in her affidavit filed in support of the said application, stated that she had come to know about the exparte order only on 16.11.2019, thereafter, had took some time for her to gather documents relating to O.S.No.8 of 2019 pending on the file of the District Court, Tirunelveli. The respondent would further submit that despite her sincere efforts, she would not able to lay her hands on certain documents. Therefore, she was unable to file the written statement in time and had been, therefore, set exparte. She would submit that non-filing of the written statement and the consequential exparte order were only for the above reason and none else and that if the exparte order is not set aside, she would suffer immense prejudice and hardship, as she has a valid defence to put against the claim made by the plaintiff/revision petitioner herein.

5.The revision petitioner had filed his counter setting forth the various dates on which the matter had been kept pending and the occasions on which the respondent should have come forward with the application to set aside the exparte order. The petitioner would submit that summons had been served on the respondent, on 13.01.2018 for the hearing on 22.01.2018. However, since she did not enter appearance, an exparte order had been passed against her and she was very much aware about this order. Thereafter, she had appeared through counsel before the Court on 12.03.2018 in the interlocutory application for injunction. Therefore, she would have definitely come to learn about the order dated 22.01.2018. The respondent had not taken any steps whatsoever to set aside this exparte order either on 12.03.2018 when the counsel has entered appearance or on 14.11.2019 when P.W.1's proof affidavit was filed. Therefore, the petitioner would submit that it was a conscious effort on the part of the respondent/5th defendant not to appear before the Court.

6.The petitioner has further stated that the application itself was not maintainable on two grounds viz., (a) since on 22.01.2018, the respondent/5th defendant had been set exparte, the matter was adjourned to 12.03.2018. In fact, even prior to that, the respondent/5th defendant had already engaged the services of a counsel; and (b) the respondent is a well established Doctor and therefore, her contention that she was awaiting the call from her Lawyer for over two years is absolutely false. Further, the respondent, who had engaged the services of the counsel, should have followed up the stage of her case with the counsel. That apart, the respondent has filed the impugned application under Order 9 Rule 7 without a petition to condone the delay.



7.The learned Additional District Judge (FTC), Tenkasi, by his order, dated 10.03.2021, was pleased to allow the application. The learned Judge had observed that adequate reasons for the non-appearance of the respondent/5th defendant on 22.01.2018 had been given. However, observed that the contention of the respondent that she required time to gather evidence appears to be sufficient cause and accordingly, allowed the application. Challenging the said order, the revision petitioner is before this Court.

8.Heard the learned counsel for the petitioner and perused the records.

9.The respondent has given sufficient reasons for her non-appearance in the affidavit filed in support of the petition to set aside the exparte decree. She has stated that she is a practising Doctor and had handed over the papers to her counsel. The respondent has also filed a written statement along with her petition to set aside the exparte decree. The respondent/5th defendant has, within two days of her coming to know about the exparte decree, filed her application to set aside the exparte decree dated 22.01.2018. Further, when the suit is at the stage of examination of witness, the impugned application has been filed. Therefore, the respondent has not only given sufficient reasons, but has also taken steps to immediately move the application. The Court below had rightly observed that considering the fact that the respondent has filed a written statement along with her application to show her bona fide, the application to set aside the exparte decree should be allowed particularly in the interest of justice. The respondent has also stated that collecting the documents from another suit had taken time. Therefore, considering the sufficient reason shown, I do not find any reason to disagree with the order, dated 10.03.2021, passed by the learned Additional District Judge (FTC), Tenkasi in I.A.No.1 of 2019 in O.S.No.170 of 2017 and the same is confirmed.

10.Accordingly, this Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

abr



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

The Additional District Judge,
Fast Track Court,
Tenkasi.

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-39800[F] dated 21/12/2021)

C.R.P. (PD) (MD) No.2055 of 2021

Dated: 20.12.2021

MGJ(25.01.2022) 4P 3C