



CRP.(PD).No. 437 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 437 of 2019

and

CMP.No.2938 of 2019

V.K. Ramamurthy

.. Petitioner

Versus

1.G. Kondaiah

2.E. Antony

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.10.2018 made in I.A.No.105 of 2018 in I.A.No.176 of 2015 in unnumbered Appeal Suit against O.S.No.121 of 1999 on the file of Subordinate Judge, Poonamallee.

For Petitioner : Mr.M.A. Lakshmipathi

For R1 : No Appearance

For R2 : Unclaimed.



CRP.(PD).No. 437 of 2019

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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 06.10.2018 passed in I.A.No.105 of 2018 in I.A.No.176 of 2015 in un-numbered Appeal Suit against O.S.No.121 of 1999 on the file of the Subordinate Court, Poonamallee.

2. The learned counsel appearing for the revision petitioner/defendant submitted that the trial Court had committed an error in I.A.No.176 of 2015, which was filed under Order 41 Rule 30 of CPC., to condone the delay of 330 days in filing the first appeal, which was allowed by order dated 14.02.2018 by directing the respondents herein to pay the costs of Rs.1,500/- on or before 02.03.2018. The respondents/plaintiffs have not paid the costs, nor filed any application for extension of time. Therefore, the said application was dismissed for non-compliance of the conditional order on 02.03.2018. In fact, the respondents/plaintiffs have not taken any steps, instead they filed application to restore I.A.No.176 of 2015, but the same was not



CRP.(PD).No. 437 of 2019

permissible under law and hence, he prays to set aside the findings of the trial Court.

3. There is no representation on the side of the respondents/plaintiffs.

4. Heard the learned counsel appearing for the revision petitioner/defendant and perused the materials available on record.

5. On perusal of the records, it is seen that the respondents/plaintiffs have filed the suit in O.S.No.121 of 1999 before the District Munsif Court, Poonamallee, for the relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The said suit was contested by the petitioner/defendant by way of filing written statement. After perusing the records, the trial Court dismissed the suit as devoid of merits, against which, the respondents/plaintiffs have preferred an appeal with a condone delay application seeking to condone 330 days but, they



CRP.(PD).No. 437 of 2019

had filed I.A.No.176 of 2015 before the Sub Court, Poonamallee and the said application was strongly objected to by the petitioner/defendant herein. Upon hearing both sides, the said application was allowed with a conditional order directing plaintiffs to pay costs of Rs.1,500/- on or before 02.03.2018 and since the order was not complied with by the respondents/plaintiffs in time, the application was dismissed as the respondents/plaintiffs have not taken any steps to comply with the order passed by the trial Court and therefore, the application was dismissed.

6. It is also seen that, again the respondents/plaintiffs have filed I.A.No.105 of 2018 under Order 9 Rule 9 of CPC., seeking to restore the application in I.A.No.176 of 2015. The said application was strongly objected to by the revision petitioner/defendant herein stating that the respondents/plaintiffs have not complied with the order passed by the trial Court and instead of filing an application for extension of time, the restoration application is not maintainable. On hearing both sides, the trial Court held that there is the reason stated by the respondents/plaintiffs in the restoration application and as such, the same



CRP.(PD).No. 437 of 2019

was acceptable and accordingly, the said application was allowed.

Challenging the said findings of the trial Court, the petitioner/defendant has filed this revision.

7. On a further perusal of the records, it is seen that the respondents/plaintiffs had preferred an appeal against the judgment and decree dated 25.10.2013 passed in O.S.No.121 of 1999 by the Additional District Munsif, Poonamallee. If at all the plaintiffs have not complied with the conditional order in time they could have filed an application for extension of time under Section 148 of CPC., and without such application, he is not empowered to file an application under Order 9 Rule 9 of CPC, to restore I.A.No.176 of 2015 and there is a specific provision to restore the application under Section 148 of CPC for extension of time to enable the party to pay the costs imposed by the trial Court seeking extension of time and the same was not properly obeyed by the plaintiffs and the amount (costs) was not deposited by the plaintiffs in time. Nor he has taken steps to give petition for extension of time. Hence, the impugned order is not sustainable and therefore, this



CRP.(PD).No. 437 of 2019

Court is inclined to allow the revision and the findings of the trial Court are liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the order passed in I.A.No.105 of 2018 in I.A.No.176 of 2015 in unnumbered Appeal Suit against O.S.No.121 of 1999 on the file of Subordinate Judge, Poonamallee, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Subordinate Judge,
Poonamallee.
2. The Section Officer, V.R.Section
High Court, Madras.



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CRP.(PD).No. 437 of 2019

T.V.THAMILSELVI, J.

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C.R.P.(PD).No. 437 of 2019

19.10.2022