



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.(NPD)No.3417 of 2019

and

C.M.P.No. 22488 of 2019

Anandan

... Petitioner

Versus

Annadurai

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05.09.2019 passed in I.A.No.465 of 2019 in O.S.No.102 of 2016 on the file of Additional District Munsif, Villupuram.

For Petitioner : Mr.T.K.Kulasekaran

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order, dated 05.09.2019 passed in I.A.No.465 of 2019 in O.S.No.102 of 2016 on the file of Additional District Munsif Court, Villupuram.



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2. The revision petitioner is the defendant and the respondent is the plaintiff in the original suit.

3. The respondent/plaintiff filed the suit in O.S.No.102 of 2016 before the Additional District Munsif Court, Villupuram, for declaration and permanent injunction in respect of the suit property. During the pendency of the suit proceedings, the respondent/plaintiff filed I.A.No. 653 of 2018 under Order 23 Rule 1 read with Section 151 of the Civil Procedure Code, seeking permission to withdraw the case filed against the defendant. After scrutinizing the records, the Court below passed an order dated 15.03.2019 allowing the said application. Challenging the impugned order passed by the Court below, the revision petitioner has filed this revision.

4. The learned counsel appearing for the petitioner/defendant submitted that the Court below erroneously allowed the application and has failed to take note of the fact that while allowing the application in I.A.No.653 of 2018 on 15.03.2019, costs of Rs.1,000/- was directed to be paid and thereby fixing a date for it as 26.03.2019 and thereafter



dismissing the same for non-payment of costs on 03.04.2019, ought not to have entertained and allowed the application under Section 148 of the Code of Civil Procedure. He further submitted that after dismissal of I.A.No.653 of 2018, the Court becomes *functus officio* and as such, the trial Court has erroneously set aside the order. The trial Court has no power to extend the time, when the Court becomes *functus officio*.

5. The learned counsel for the revision petitioner has relied upon the decision of this Court in the case of **D.Raju v. N.Ramalingam**, reported in **2001 (1) T.L.N.J. 291**, wherein the relevant portion is extracted as follows:-

"Bearing in mind the various decisions relied upon by the learned counsel for the petitioner as well as the learned counsel for the respondent, I am of the view, the exercise of power under section 148 of the Code of Civil Procedure would depend upon the question when the application was filed and whether the Court is in seisin of the matter or whether the Court has become *functus officio*. In my view, the Court has the power under section 148 of the Code to extend the time only if the Court has not become *functus officio*. In the instant case, the learned District Munsif had already dismissed the petition when the application for extension of time



was filed and hence, the Court became functus officio and the power under Section 148 of the Code of Civil Procedure is not available to the learned District Munsif to extend the time certain granted by lusu."

(ii) Yet another decision of this Court in the case of **K.Rangasamy v. Muthusamy Gounder and others** reported in **2005 SCC Online Mad. 424.**

6. None appeared on behalf of the respondent.

7. On a perusal of the records, it reveals that the respondent/plaintiff filed a suit in O.S.No.102 of 2016 before the Additional District Munsif Court, Villupuram, for declaration and permanent injunction. The petitioner/defendant filed written statement in the original suit, issues have already been framed, trial has also commenced and PW1 examined as well as DW1 was also examined and cross-examination of the witnesses have also been completed. When DW2 was being cross examined, at that time, the respondent/plaintiff filed I.A.No.653 of 2018 under Order 23 Rule 1 of CPC., seeking permission to withdraw the suit filed against the defendant and the same



was allowed by order dated 15.03.2019 on payment of costs of Rs.1,000/- on or before 26.03.2019, but, he has failed to pay the costs in time. Hence, the said application was dismissed on 03.04.2019. Thereafter, two months later, he filed I.A.No.465 of 2019 under Section 148 of CPC., seeking to extend the time to pay the costs of Rs.1,000/- already ordered in I.A.No.653 of 2018 and the same was allowed by directing the respondent to pay a sum of Rs.1,000/- to the petitioner herein on or before 26.03.2019 and time was extended till 16.09.2019. Aggrieved by the said order, the present revision has been filed.

8. It is also seen that even after completion of the trial as well as completion of the witnesses, the respondent filed an application seeking permission to withdraw the original suit. Reason is that the aforesaid suit has mistakenly been filed by the respondent/plaintiff before the Court below and as such, the same is not acceptable. Hence, this Court is inclined to set aside the impugned order passed by the Court below.

9. Considering the above citations which are squarely applicable to the facts of the present case, that the Court below dismissed the application in I.A.No.653 of 2018 for non-payment of costs, thereafter,



two months later, the respondent/plaintiff filed an application for extending the time under Section 148 of CPC., already the trial Court becomes *functus officio* and it has no power to extend the time. Therefore, the Court below has erroneously allowed the application and the same is liable to be set aside.

10. Accordingly, the Civil Revision Petition is allowed. The impugned order dated 05.09.2019 passed in I.A.No.465 of 2019 in O.S.No.102 of 2016 by the Additional District Munsif Court, Villupuram, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2022

msm

Speaking Order : Yes/No

To

The Additional District Munsif,
Villupuram.



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T.V.THAMILSELVI, J.

msm

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