



C.R.P (MD) No.21 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P(MD)No.21 of 2018 and
CMP(MD) No.90 of 2018

J.Thomas

... Petitioner

Vs

1.K.Micheal
2.V.Shanmugaiya
3.R.Velmurugan
4.M.Saravanaperumal
5.S.Sarada
6.S.Sundar Raj

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 08.08.2017 made in I.A.No.208 of 2017 in O.S.No.398 of 2016, on the file of the Additional District Munsif Court, Tuticorin.

For Petitioner
For R1

: Mr.S.Sivathilakar
: Mr.D.Anbarasu



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per Order 8 Rule 1 of Civil Procedure code. According to the petitioner, though the sixth defendant received summons on 08.01.2017, he has filed the written statement only on 07.04.2017, which is, beyond the period of limitation prescribed under Order VIII Rule 1 of CPC. Therefore, the petitioner/plaintiff has filed the application in I.A.No.208 of 2016, under Order VIII, Rule 1 and Section 151 of Civil Procedure Code, to reject the written statement filed by the sixth defendant and the same was dismissed by the trial Court. Aggrieved over the same, the present civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner/plaintiff submits that though the respondents/defendants received summons as early as in the year 2016, they failed to file written statements within the stipulated time. According to the learned counsel for the petitioner, the delay in filing the written statement is only to drag on the proceedings. Hence, the order of the trial Court has to be set aside.



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4.The learned counsel appearing for the respondents submits that the period of 90 days prescribed under Order VIII Rule 1 of Civil Procedure Code is only directory and not mandatory. The learned counsel has also relied upon the judgment of the Honourable Supreme Court in *Kailash Vs Nanhku and others*, reported in (2005) 4 SCC 480.

5.Heard the learned counsel on either side and perused the materials placed on record.

6.Admittedly, the revision petitioner/plaintiff filed the suit in O.S.No.396 of 2016, wherein, the sixth defendant received summons on 08.01.2017. But, he filed his written statement belatedly, which according to the petitioner, beyond the period of limitation prescribed under Order VIII Rule 1 of Civil Procedure Code. Hence, the plaintiff filed an application in I.A.No.208 of 2016 to reject the written statement filed by the sixth defendant, which was dismissed by the trial Court. The



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said dismissal order is under challenge in this Civil Revision Petition.

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7. On perusal of the order passed of the trial Court shows that the defendants 1,3 & 6 have filed their written statements on 07.04.2017, 05.04.2017 and 27.03.2017 respectively. The second defendant was set exparte on 02.06.2017. The trial Court has held that from the date of first hearing i.e on 19.01.2017, the defendants 1,3 and 6 have filed their written statements within 90 days. The trial Court has further held that in order to decide the rights of the plaintiff, it is essential to hear the defendants' side also and hence in the interest of justice, the trial Court dismissed the application filed by the petitioner/plaintiff.

8. Considering the fact that the suit is posted for defendants' side evidence and the suit is in the fag end of the trial and also taking into account that the limitation period of 90 days prescribed under Order VIII Rule 1 is only directory and not mandatory, this Court is not



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inclined to interfere with the order of the trial Court. However, considering the fact that the suit is of the year 2016, the trial Court shall endeavour to complete the trial as expeditiously as possible.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.08.2022

Index : Yes / No.

Internet : Yes / No.

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To

The Additional District Munsif Court, Tuticorin.



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B.PUGALENDHI, J.

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