



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.470 of 2017

and

C.M.P. (MD) No.2274 of 2017

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M.Kala .. Petitioner/Petitioner/
2nd Defendant
-vs-
1.M.Sankar .. 1st Respondent/1st Respondent/
Plaintiff
2.N.Pandi .. Respondents/ Respondent/
1st Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.12.2016 in I.A.No.483 of 2016 in O.S.No.150 of 2013 on the file of the Subordinate Judge, Sankarankovil.

For Petitioner : Mr.T.S.R.Venkataramana

For R1 : Mr.Balasubramanian

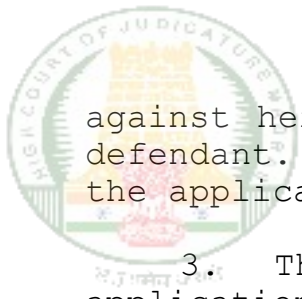
For R2 : Mr.R.M.Anbumani

ORDER

The 2nd defendant in the suit in O.S.No.150 of 2013 is before this Court challenging the order dated 14.12.2016 passed in I.A.No.483 of 2016 in O.S.No.150 of 2013. I.A.No.483 of 2016 has been filed invoking the provisions of Order IX Rule 7 to set aside the ex-parte order dated 11.03.2014.

2. The brief facts are as follows:-

2.1. The suit in O.S.No.150 of 2013 was filed by the 1st respondent herein for a mandatory injunction directing the defendants to handover possession of the suit property after receiving a sum of Rs.3,00,000/- as per the terms of the agreement dated 09.07.2010 and failing which to order damages at Rs.6000/- per month. The revision petitioner had entered appearance through counsel, but however since she had not filed her written statement, she had been set ex-parte on 11.03.2014. It is her case that on the said date, she was suffering from Jaundice. Thereafter, when she tried to get information about her case on 11.10.2016, she came to learn that her erstwhile counsel had passed away and she also came to know that an ex-parte order had come to be passed



against her and the matter was listed for the arguments of the 1st defendant. As soon as she had come to know about the said order, the application has been filed for setting aside the ex-parte order.

3. The 1st respondent/plaintiff had objected to the said application stating that it is filed with a delay and meant to protract the proceedings. The learned Subordinate Judge, Sankarankovil proceeded to dismiss the application by order dated 14.12.2016. The learned Judge has observed that the plaintiff has not proved the statement made by her in the affidavit filed in support of the application. The learned Judge has also relied upon certain judgments and has also observed that there was a delay of over 662 days in filing the application to set aside the ex-parte order. Therefore, in this view of the matter, the learned Judge had dismissed the said application. This is the order that is the subject matter of challenge before this Court.

4. Admittedly, the suit is still pending at the stage of arguments. The petitioner had been set ex-parte and it is also an admitted fact that the counsel whom she had engaged is no more. The learned Judge ought to have taken a more liberal approach and should have set aside the ex-parte order. The learned Judge observed that there is a delay overlooking the fact that the application is one filed under the provisions of Order IX Rule 7 of the Code of Civil Procedure.

5. The learned counsel appearing for the 1st respondent had fairly concede to the point.

6. In these circumstances, the order dated 14.12.2016 passed by the learned Subordinate Judge, Sankarankovil in I.A.No.483 of 2016 in O.S.No.150 of 2013 is set aside and the Civil Revision Petition stands allowed. Considering the fact that the suit is at the stage of argument, the learned Judge shall dispose of the suit by 30.06.2022 giving opportunity to the 2nd respondent. It is seen that along with the impugned application, the revision petitioner has also filed her written statement. The learned Judge shall take the written statement on file, frame issues and permit the parties to adduce evidence also with regard to the additional issues that are to be framed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

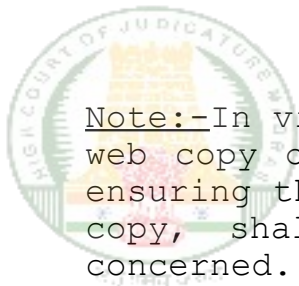
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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.

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To
The Sub Judge, Sankarankovil.

Copy to:

The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-2766[F] dated 28/01/2022)

C.R.P. (PD) (MD) No.470 of 2017
Dated: 27.01.2022

RD(10.02.2022) 3P 4C