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CRP.No. 2408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V. BHAVANI SUBBAROYAN**

CRP.No. 2408 of 2023

and

CMP.No. 15078 of 2023

Thangamani

... Petitioner

Versus

V. Dhanalakshmi

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order, dated 27.04.2023 passed in I.A.No. 4 of 2023 in I.A.No. 3 of 2023 in I.A.No. 892 of 2017 in O.S.No. 1128 of 2006 on the file of the II Additional District Munsif, Salem.

For Petitioner : Mr. R. Nalliyappan

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order, dated 27.04.2023 passed in I.A.No. 4 of 2023 in I.A.No. 3 of 2023 in I.A.No. 892 of 2017 in O.S.No. 1128 of 2006 on the file of the II



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2. Originally, the respondent/plaintiff has filed the suit in O.S.No. 1128 of 2006 before the learned II Additional District Munsif, Salem, for declaration and permanent injunction. The defendant has contested the suit by filing written statement denying all the averments made in the plaint. Subsequently, the suit was dismissed for default on 01.03.2017 for non-appearance of the plaintiff. Subsequently, the respondent/plaintiff has filed an application to restore the suit, which was taken on file on 18.12.2017 in I.A.No. 892 of 2017. When the said application was pending for enquiry, on 19.01.2023, the respondent/plaintiff has filed a petition in I.A.No. 3 of 2023 seeking to receive the documents. In the said application, counter was not filed by the respondent and the same was allowed by order dated 10.02.2023. Subsequently, the application in I.A.No. 4 of 2023 under Order 9 Rule 7 of CPC., seeking to set aside the exparte order passed on 10.02.2023 and receive the counter.

3. It could be seen that I.A.No.3 of 2023 has been finally adjudicated upon and as such, the present petition to set aside the ex-parte order dated



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10.02.2023 is not maintainable. Furthermore, an order to receive the additional documents in evidence, is always subject to proof, relevancy and admissibility and mere allowing of the application does not dispense with the above. The petition in I.A.No. 892 of 2017 has been pending for more than five years now.

4. It is also seen that the Court below ought not to have dismissed the application filed under Order 9 Rule 7 of CPC., to set aside the ex-parte order passed in an interim application, as not maintainable, is not correct. While that being the case, the respondent has left the suit to be dismissed for default and thereafter, the plaintiff filed I.A.No. 892 of 2017 to restore the above suit. In the above interim application, the petitioner/defendant filed detailed counter by denying with the averments made in I.A.No. 892 of 2017. Subsequent to that, the respondent, after six years filed an IA.No. 3 of 2023 to condone the delay in filing certain documents in I.A.No. 892 of 2017. The petitioner received papers in I.A.No. 3 of 2023 and sought time for filing counter in the above application. The Court below posted the application in IA.No. 3 of 2023 for counter and disposal of the above application on 10.02.2023 immediately after numbering the said application. On the said



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date itself, without providing any opportunity to the petitioner, the Court below allowed the application on 10.02.2023. Immediately, on 24.02.2023, the petitioner herein filed an application in I.A.No. 4 of 2023 under Order 9 Rule 7 of CPC to set aside the ex-parte order dated 10.02.2023, but the Court below simply dismissed the above application as not sustainable and the same is liable to be set aside. The Court below failed to provide an opportunity to file counter in the above application before considering the application to mark additional documents. Therefore, the Court below ought to have considered that the respondent while filing the application in I.A.No. 892 of 2017, had not marked any document to substantiate the averments in the said application, whereas after six years, the respondent has filed the above application in I.A.No. 3 of 2023 to mark some documents and hence, it is just and necessary that the petitioner has to file counter in the said application and contest the same. Hence, the court below ought to have provided an opportunity to the petitioner to contest the said application. Hence, the said order is liable to be set aside.

5. Since the petitioner has got an opportunity to defend himself, such documents are marked through the concerned parties. Those documents



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absolutely are original, which are medical records and the report of the said authority. Hence, the petitioner will be given an opportunity to defend himself to cross examine him regarding those documents of admissibility, genuinity and other evidence.

6. Taking into the above facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, this Court directs the trial Court to pass appropriate orders in I.A.No. 892 of 2017 after examining the parties concerned in respect of documents in question, and to complete the entire process within a period of six months from the date of receipt of a copy of this order.

7. With the above directions, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

18.07.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
msm

To

1. The II Additional District Munsif, Salem.



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2. The Section Officer, V.R. Section, High Court, Madras.

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V.BHAVANI SUBBAROYAN, J.

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