



C.R.P.No. 3656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3656 of 2023

and

C.M.P.No. 22936 of 2023

M.Sarathy

.. Petitioner

Vs

1.Sathya

2.Chitra

3.Devika

4.N.Karunagaran

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal order dated 22.08.2023 on the file of the Hon'ble VII Additional City Civil Court, Chennai dismissing the application in I.A.No.4 of 2023 in O.S.No. 4086 of 2019 to take off the written statement from the file of the Hon'ble Court.

For Petitioner : Ms.R.K.Sukina Reshma

For R4 : Mr.N.Manoharan



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ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.4 of 2021 in O.S.No.4086 of 2019 on the file of VII Additional City Civil Court, Chennai.

2. The plaintiff / petitioner herein in O.S.No.4086 of 2019 has preferred this revision.

3. Before the trial Court, the plaintiff / petitioner herein filed an application under Order VIII Rule 1 and 10 r/w Section 151 CPC to take off the written statement filed by the fourth defendant. The contention of the plaintiff / petitioner herein is that, the fourth defendant received the suit summon and entered into appearance but not filed statement within a period of six weeks, as prescribed in summons. Thereafter, he filled written statement on 08.09.2021 and the same ought to be deemed as negation, as sufficient cause was not assigned for non filing of the written statement for the past five years from the date of the suit. That application was opposed



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by the fourth defendant stating that already he filed an application to reject the plaint. Due to the pendency of that application, necessity not arose for him to file written statement. Only after conclusion of the rejection of the plaint proceeding, the fourth defendant is entitled to file written statement. Therefore, no laches on his part. But he was set ex parte by the trial Court but immediately, he filed an application to set aside the same. That application was returned and as per the direction of the Court, he filed written statement and represented the set aside petition in I.A.No.3 of 2021 by all the defendants and the same was allowed. Now the case is ripe for trial.

4. Considering both submissions, the trial Judge held that as per Order VIII Rule 10 CPC, the Court is not empower to receive the statement beyond 120 days but if there is provided, if any ex parte decree is not passed and if there is no mistake on the side of the fourth defendant, the Court can extend the time in exceptional case. Accordingly, already Order VII Rule 11 CPC is pending before the Court. Therefore, the reason assigned by the fourth defendant is justifiable and the ex parte order was set aside as he filed



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written statement. Therefore, there is no defect or mistake on the side of the fourth defendant. Accordingly, the application was allowed. As against which, the present revision is filed.

5. The learned counsel for the petitioner submits that the fourth defendant being an Advocate by profession, having know the legal proposition, but not filed written statement within time and after 5 years he come forward with the said application, as such is clear negligence on his part but the trial Judge failed to take note of the same. Hence, prayed to set aside the finding in I.A.No.4 of 2021.

6. By way of reply, the learned counsel for the fourth respondent submits that after receipt of the notice, he filed application to reject the plaint, as it is a second round of litigation and the same was pending for enquiry. In the normal course, while the rejection of the plaint petition is pending, after disposal of the same the written statement is to file. So the defendant awaits for the disposal of the Order VII Rule 11 CPC. In the meanwhile, he was set ex parte. Immediately, he filed application to set



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aside the same and as per the direction of the Court, he filed written statement and the same was received by the trial Court by allowing the said application. Therefore, the plaintiff has no right to take off the written statement filed by the fourth defendant.

7. Considering both submissions, it is true that the written statement was not filed by the fourth defendant within 120 days as required under law. But during the pendency of the proceeding, he filed application to reject the plaint, the same was pending between the parties, it is an admitted fact. During the pendency of the rejection of the plaint petition, the fourth defendant was set ex parte. Immediately, he filed petition to set aside and as per the direction of the Court he filed written statement. Though the application was allowed by receiving written statement to set aside the ex parte order, as on date, that order has not been challenged. Therefore, the objection raised by the plaintiff / petitioner herein, stating that within 5 years written statement has not been filed, cannot be considered at this stage since written statement was issued by the trial Court by condoning all the facts and circumstances. Therefore, the objection raised by the revision petitioner as such is not sustainable. Reason assigned



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by the trial Court needs no interference.

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8. In the result, the Civil Revision Petition is dismissed.

However, the suit was filed in the year 2019, therefore, Trial Court is directed to dispose the suit within four months from the date of receipt of copy of this order and both the parties are directed to cooperate for the proceeding. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The VII Additional City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

AT

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