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CRP.No. 683 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 683 of 2020

and

CMP.No. 3547 of 2020

S. Anusuya

... Petitioner

Versus

1. Mallika
2. Kalavathy
3. Chellan @ Selvam
4. The Special District Revenue Officer
(Land Acquisition)
National Highways (Planning)
Kanchipuram and Thiruvallur District.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 31.07.2019 in I.A.No. 1135 of 2018 in O.S.No. 175 of 2017 on the file of District Munsif, Tambaram.

For Petitioner : Mr.G. Ilamurugu

For R1 : Mr.S.M.S. Shriram Narayanan
for M/s.P.V. Law Associates



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 31.07.2019 in I.A.No.1135 of 2018 in O.S.No. 175 of 2017 on the file of the District Munsif Court, Tambaram.

2. The revision petitioner is the plaintiff and the respondents are the defendants in the original suit.

3. It is the case of the petitioner/plaintiff that she has filed a suit in O.S.No.175 of 2017 before the District Munsif Court, Tambaram, for mandatory injunction directing the 4th defendant to disburse the compensation relating to the property of the plaintiff acquired by the National Highways pursuant to the Notification issued under Section 3(g)(3) and (4) of the National Highways Act.

4. The 1st defendant has contested the suit by filing written statement and denied all the averments made in the plaint.



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5. The trial Court passed an ex-parte decree dated 08.06.2018. Subsequently, the 1st respondent/1st defendant filed I.A.No.1135 of 2018 under Order 9 Rule 7 of CPC., seeking to set aside the ex-parte decree dated 08.06.2018. After perusing the records, the trial Court allowed I.A.No.1135 of 2018 in O.S.No. 175 of 2017 by order dated 31.07.2019. Aggrieved by the said order, the petitioner/plaintiff has filed the present Civil Revision Petition.

6. According to the petitioner, the application filed by the 1st defendant is neither maintainable in law nor on facts. The 1st defendant has been suffering from prolonged illness and no piece of evidence is produced to show the nature of suffering and the treatment undertaken. Therefore, such a plea cannot be entertained by any one, much less by the Court below. The averments made in Paragraph No. 2 of the affidavit filed by the 1st defendant, are in support of his case to the extent of the date of hearing, viz., the case was posted on 08.06.2018 for filing the written statement. Having failed to file the written statement as directed by the Court below, neither the 1st defendant, nor the counsel for the 1st defendant, made a representation and as such, the application taken out by



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the 1st defendant is neither maintainable in law, nor on facts and therefore, the above revision is liable to be dismissed.

7. Per contra, the petitioner/plaintiff has filed the suit for mandatory injunction in respect of the suit property against the 4th defendant. The case was posted on 08.06.2018 for filing written statement. Due to prolonged illness, the 1st respondent was unable to meet her counsel and thereby, her counsel was unable to file written statement. Due to the aforesaid reasons only, the trial Court passed ex-parte decree against her and the suit was posted for ex-parte evidence on 04.08.2018. Therefore, non-filing of written statement is neither willful nor wanton. Hence the findings of the trial Court may be set aside.

8. On a perusal of the impugned order dated 31.07.2019, it is seen that the petitioner/plaintiff filed a suit in O.S.No. 175 of 2017 for permanent injunction with regard to the suit property against the 4th defendant. The 1st defendant has contested the suit by filing written statement and denied all the averments made in the plaint. Subsequently, the trial Court passed an ex-parte judgment and decree dated 08.06.2018



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for non-filing of the written statement. According to the petitioner, the case was posted on 08.08.2018 for filing of written statement. On the other hand, the first defendant, except making the averment as if she was suffering from prolonged illness and unable to meet her counsel for instructions, which are all materials invented to secure the order at the back of the petitioner/plaintiff. The 1st defendant mainly contended that due to prolonged illness, he was unable to meet her counsel and thereby, she was unable to file the written statement in time. On a careful analysis of the entire records for non-filing of written statement, it is seen that the Court below passed ex-parte decree against the first respondent/1st defendant. Therefore, the 1st defendant has filed the application and the trial Court has rightly come to the conclusion and the same was allowed on 31.07.2019. Hence, there is no illegality or irregularity in the impugned order passed by the Court below and hence, this Court also is not inclined to allow the above Revision and the same is liable to be dismissed.

9. On going through the averments made in the petition as well as counter affidavit, it is seen that the suit was filed by the plaintiff for



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mandatory injunction directing the 4th defendant to disburse the compensation relating to the property of the plaintiff acquired by the National Highways, in pursuant to the Notification under Sections 3(g)(3) and (4) of the National Highways Act and no declaration prayer was sought for. Already, an application filed for amending the plaint for declaration, has to be considered, after filing the written statement by the 1st respondent herein. Now, the title of the suit property has to be decided by the trial Court only on evidence during the course of trial. Accordingly, this Court is of the view that the reasons stated by the 1st defendant that due to her prolonged illness, she could not file written statement is found to be genuine.

10. Taking into consideration the facts and circumstances of the case, the first respondent is directed to file written statement, if not already filed and a copy of the same be served on the plaintiff to raise her objections if any, and appropriate issues should have been framed. The trial Court is directed to dispose of the suit in O.S.No. 175 of 2017 as expeditiously as possible.



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11. Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The District Munsif, Tambaram.
2. The Section Officer, V.R.Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

msm

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