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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

**C.R.P.(NPD).No.4120 of 2019
and C.M.P.No.26853 of 2019**

1. G. Muthulakshmi
2. R. Ganesan
3. G. Mohanapriya @ Priya
4. G. Varalakshmi @ Vanitha

... Petitioners

Vs

Manjula

... Respondent

Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order in I.A.No.1 of 2019 in A.S.No.428 of 2018 dated 07.09.2019 on the file of III Additional City Civil Court, Chennai.

For Petitioners : Mr.D.Manimaran

For Respondent : Mr.C.Sivanesam

ORDER

Challenging the fair and final order passed in I.A.No.1 of 2019 in A.S.No.428 of 2018 on the file of the III Additional City Civil Court, Chennai, the respondents have filed the above Civil Revision Petition.

2. The learned counsel for the petitioners submitted that



O.S.No.5025 of 2013 was filed on 12.09.2013 on the file of VI Assistant City Civil Court, Chennai for relief of permanent injunction restraining the defendant their men, agent or any one claiming right under the defendant in any manner interfering with the peaceful possession and enjoyment of the plaintiff in respect of the suit schedule property. The suit was contested and the same was dismissed by the trial Court by a common judgment dated 17.08.2015 in O.S.No.5025 of 2013 and O.S.No.150 of 2014. The plaintiff filed the appeal suit along with condone delay petition for condonation of the delay of 960 days, which was contested before the appellate Court and the said petition was allowed on condition of payment of costs and subsequently the appeal was numbered as A.S.No.428 of 2018 and the appeal was contested by both the parties and the judgment was reserved by the appellate Court on 19.07.2019. The respondent herein filed I.A.No.1 of 2019 in A.S.No.428 of 2018 to reopen the above A.S.No.428 of 2018 for enquiry after the judgment was reserved by the appellate Court on 19.07.2019. The appellate Court by its fair and decretal order dated 07.09.2019 allowed the said I.A.No.1 of 2019 in A.S.No.428 of 2018. The learned counsel drew the attention of the relevant portion of the order, which is quoted



hereunder for ready reference:

7. The petitioner had not filed any petition to condone the delay and no dispute about the preposition covered under the above said authorities. The petitioners counsel who had represented the appeal had filed the reopen petition, when the appeal was reserved for orders by stating that by mistake he had failed to mark his documents in appeal though he had relied upon the same in the petition filed for condonation of the delay in filing the appeal which is vital for his claim in the appeal. Hence prayed to reopen of the appeal for marking the documents that were already relied on by him in the petition for condoning the delay in the main appeal failing which he will be put to loss and hardship.

8. On perusal of the affidavit it is true that the provision was not mentioned and the appellant had not signed the affidavit. Non-quoting of the provision is not fatal as the procedures are handmaid of justice and since it was the mistake of counsel who had failed to file the document relied upon by him in appeal though it forms part of the record as a document while considering the petition for condonation of delay a party cannot be allowed to suffer for the mistake of his counsel. Hence in the interest of justice the petitioner must be given an opportunity to reopen the appeal for marking the documents which was already relied on by him. An opportunity to be given to the petitioner to put-forth his contention and no prejudice is going to cause to the respondent who is entitled to defend the document on merits. Hence the petition is allowed and point for consideration is answered accordingly.

3. The learned counsel for the petitioners would further submit that

all the documents were taken into consideration by the trial Court and it



is a contested suit and the same was dismissed by the trial Court by a common judgment on 17.08.2015. The appeal suit was also argued by both sides and judgment was reserved on 19.07.2019 and subsequently this I.A.No.1 of 2019 has been filed. There is no necessity to file I.A.No.1 of 2019 since the documents i.e., letters sent by the respondent namely Mrs.Manjula to her previous counsels Mr.Murugan and Mr.D.Suresh dated 09.04.2018 and the reply letter sent by the respondent namely Mrs.Manjula to her previous counsel are not vital in deciding the appeal suit.

4. Per contra, the learned counsel for the respondent submitted that the civil revision petitioners / respondents have borrowed a sum of Rs.7,00,000/- and the same was not repaid and the respondent is at loss. Hence, the documents which are referred in the I.A. are vital for deciding the appeal suit. No prejudice would be caused to the petitioners if the appeal suit is reopened and taken up for fresh consideration by the appellate Court. The learned counsel appearing for the respondent would further submit that the plaintiff/respondent has been cheated by the learned counsel who had appeared in the trial Court, but there is no



averments in the form of grounds raised in the civil revision petition in this regard.

5. Heard both sides and perused the materials available on record.

6. I.A.No.1 of 2019 filed by the petitioner on 16.09.2019 is to reopen A.S.No.428 of 2018 for enquiry, in which judgment has already **been reserved by the appellate Court on 19.07.2019 and the application has been filed subsequently on 16.08.2019 to re-open the appeal. It is evident from the adjudications that the appellant in the appeal has taken adjournments on 11 occasions and the learned counsel has not chosen to file I.A. during that period.**

7. The main contention of the learned counsel for the respondent is that the documents which he wanted to mark in the appeal suit has been already filed along with the condone delay petition for condonation of the delay of 972 days in filing the appeal suit and he came to know only when the judgment was reserved in the appeal suit that those three documents which are vital to decide the appeal were not marked.



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8. This Court is not inclined to accept the above submission / contention raised by the learned counsel for the respondent. If at all the respondent/appellant wanted to file I.A. the learned counsel ought to have verified well in advance and taken steps to mark those documents immediately and the plea of the respondent that he came to know only after the judgment was reserved is unsustainable and the same is not substantiated properly. Therefore, this Court is of the considered view that the trial Court erred in allowing the I.A.No.1 of 2019.

9. In the result, the Civil Revision Petition stands allowed and the fair and decreetal order in I.A.No.1 of 2019 in A.S. No.428 of 2018 dated 07.09.2019 passed by the learned III Additional City Civil Court, Chennai is liable to be set aside and the same is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

Index : No
Internet : Yes
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J. SATHYA NARAYANA PRASAD, J.



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To
The III Additional City Civil Court,
Chennai

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