



WEB COPY



C.R.P(MD).Nos.710 & 711 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).Nos.710 & 711 of 2023

and

CMP(MD)No.3324 of 2023

T.Shajukumar

... Petitioner/Respondent/Plaintiff
(In both petitions)

Vs.

Aji

... Respondent/Petitioner/Defendants
(In both petitions)

COMMON PRAYER:- These Civil Revision Petitions have been filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 24.06.2022 of the Court of the learned Subordinate Judge, Kuzhithurai, made in I.A.Nos.4 & 5 of 2021 in O.S.No.98 of 2021 on its file, dismissing the said I.A.

(In both petitions)

For petitioner : Mr.K.N.Thampi

COMMON ORDER

These petitions have been filed to set aside the order and decreetal order of the Court of the learned Subordinate Judge, Kuzhithurai, made in I.A.Nos.4 & 5 of 2021 in O.S.No.98 of 2021, dated 24.06.2022 .



2.The petitioner is the plaintiff in O.S.No.98 of 2021. The suit was filed by the plaintiff during the second wave of Covid-19. Which resulted in large scale of disruption of economic and social activities in India and whole world. In the said suit, the petitioner had also filed an application for attachment. Notice was ordered on the respondent/defendant on 31.05.2021. The respondent was set *ex-parte* on 29.10.2021. Thereafter, the case was posted for pronouncing judgment on 20.11.2021. Mean time, the respondent filed an applications in IA.Nos. 4 & 5 of 2021 to reopen the evidence and to set aside the order setting the respondent *ex-parte*. These applications filed have been allowed by the Trial Court which have been impugned in these Civil Revision Petitions.

3.The learned counsel for the petitioner submits that the Trial Court committed grave error in allowing the application, as the applications for setting aside *ex-parte* order was filed after the case was reserved for pronouncing judgment. A reference is made to the decision of the Hon'ble Supreme Court in **Rasiklal Manikchand Dhariwal & Another Vs. M.S.S.Food Products** reported in **2012 SAR (Civil) 94**. Especially reference is made to paragraph 34 & 35. The learned counsel also relied on the another decision of the Hon'ble Supreme Court rendered in **Arjun Singh Vs, Mohindra Kumar and Others** reported in **AIR 1964 SC 993**.



4.The learned counsel for the petitioner has also drawn attention to the affidavit filed by the respondent before the Trial Court giving reasons/excuse for not appearing on 06.08.2021.

5.I have considered the arguments advanced by the learned counsel for the petitioner/plaintiff in O.S.No.98 of 2021.

6.No doubt law that has been laid down by the Hon'ble Supreme Court is to be followed without any deviation. In the context of Order 9 Rule 7 of CPC, the Hon'ble Supreme Court held that an application under Order IX Rule 7 of CPC cannot be entertained, once the case was reserved for pronouncing order. The language in Order IX Rule 7 of CPC is also clear an application for setting the defendants *ex-parte* can be made only where, when the case is listed for hearing of the suit. In this case, hearing took place on 29.10.2021 and the case was reserved for pronouncing judgment on 20.11.2021. An application for setting aside an order setting aside *ex-parte order* is not maintainable when orders are reserved in the light of the law laid down by the Hon'ble Supreme Court in **Rasiklal Manikchand Dhariwal & Another Vs. M.S.S.Food Products** (cited supra). However, the suit came to be filed during the second lock down when there was a large scale disruption



of all activities. The Court below ought to have slow in setting the respondent/defendant *ex-parte*.

7.The suit is of the year 2021 filed on during June 2021. The explanation given by the respondents and the affidavit filed in support of the application stating that he was unable to appear due to auto driving profession and that on 29.10.2021, his child was affected with fever he was himself under prolong treatment and hence, was unable to attend the Court and give the instruction to his Advocate ought to be accepted. At that time, the Trial Court while allowing the application ought to have allowed the application on terms by directing the respondent/defendant to deposit the amount to show his *bona fied*.

8.Therefore, this Court is not inclined to interfere with the order passed by the Subordinate Judge, Kuzhithurai, in I.A.Nos.4 & 5 of 2021 in O.S.No. 98 of 2021, dated 24.06.2022 and is inclined to dismiss the Civil Revision Petitions.

9.The respondent shall however deposit 50% of the suit claim before the Trial Court within a period of 8 weeks from the date of receipt of a copy



C.R.P(MD).Nos.710 & 711 of 2023

of this order. It is open to the petitioner to file an appropriate application for payment only. It is made clear that only after the aforesaid amount is deposited before the Trial Court, within such time the Court shall proceed further. In case, the respondent complying with all the above requirements, the Court shall endeavour to dispose the suit within a period of 12 months.

10. With the above direction, these Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

1. The Subordinate Judge, Kuzhithurai.
2. The Principal Sub Judge,
Thanjavur.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD).Nos.710 & 711 of 2023

C.SARAVANAN,J.

dss

C.R.P(MD).Nos.710 & 711 of 2023
and
CMP(MD)No.3324 of 2023

16.03.2023