



C.R.P.(MD)No.2305 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2305 of 2023
and
C.M.P.(MD)No.11876 of 2023

S.K.Swaminathan : Petitioner/Respondent/Defendant
Vs.

S.Pushparani : Respondent/Petitioner/Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to call for the records and set aside the fair and decreetal order, dated 27.07.2023 in I.A.No.4 of 2023 in O.S.No.611 of 2022 on the file of the learned District Munsif Court, Karaikudi, Sivagangai District.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondent : Mr.A.Srinivasan

ORDER

The Civil Revision is directed against the order passed in I.A.No.4 of 2023 in O.S.No.611 of 2022, dated 27.07.2023 on the file of the learned District Munsif Court, Karaikudi, Sivagangai District, allowing the



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petition filed under Order 23 Rule 1(3B) of C.P.C., permitting the respondents to withdraw the suit with liberty to file a fresh suit.

2. The learned counsel for the petitioner would submit that after receipt of notice in the petition filed in I.A.No.4 of 2023 under Order 23 Rule 1(3B) of C.P.C., they have specifically endorsed “received copy, pray for counter” and despite the above endorsement, the learned trial Judge has passed an order on the same day on 27.07.2023, without assigning any reason and that therefore, the petitioner is constrained to file the above revision challenging the order.

3. It is necessary to refer the impugned order passed by the learned trial Judge.

“Plaintiff present. Heard. Reasons satisfied.

Plaintiff/petitioner being the dominus litus wants to withdraw the suit with liberty to file fresh suit. Petition allowed.”

4. Moreover, as rightly pointed out by the learned counsel for the petitioner, the counsel appearing before the trial Court has specifically endorsed that they wanted to file counter statement to the above



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application, in spite of the above endorsement, the learned trial Judge without giving any opportunity to file counter statement and without hearing the other side, passed the impugned order, allowing the petition.

5. Moreover, as rightly pointed out by the learned counsel for the petitioner, the impugned order is not in accordance with law and the learned trial Judge has not assigned any reason whatsoever, while deciding to grant permission to the plaintiff to withdraw the suit with liberty to file a fresh suit. Hence, this Court has no hesitation to hold that the impugned order is not in accordance with law and the same is liable to be set aside.

6. In the result, the Civil Revision Petition is allowed. The trial Court is directed to restore the petition on file, afford opportunity to the petitioner herein to file counter statement and after receipt of the counter statement, conduct enquiry and pass orders in accordance with law. Consequently, connected Miscellaneous Petition is closed. No costs.

15.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The District Munsif Court, Karaikudi,
Sivagangai District.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(MD)No.2305 of 2023
and
C.M.P.(MD)No.11876 of 2023

Dated : 15.11.2023