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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.09.2023
Delivered on : 27.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2283 of 2022
and
C.M.P(MD)No.10884 of 2022

P.K.Ganesan

... Petitioner/Petitioner/7th Defendant

Vs.

Valliyathal

... Respondent/Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.09.2022 passed in I.A.No.2 of 2022 in O.S.No.146 of 2014 on the file of the learned Additional Sub-Court, Karur.

For Petitioner
For Respondent

:Mr.M.P.Senthil
:Mr.Raguvaran Gopalan

ORDER

This civil revision petition is filed as against the fair and decreetal order dated 13.09.2022 passed in I.A.No.2 of 2022 in O.S.No.146 of 2014 on the file of the learned Additional Sub-Court, Karur.



2. According to the revision petitioner/7th defendant, the respondent filed a suit in O.S.No.146 of 2014 before the Additional Sub-Court, Karur, for partitioning 'A' schedule property into 4 equal shares and 'B' schedule property into 8 equal shares and seeking for permanent injunction restraining the defendants 1 to 6 not to alienate or encumber 'A' schedule and 'B' schedule property and restraining the defendants 7 to 11 not to quarrying the operations in 7th and 8th items of suit 'B' schedule properties. The said suit was posted on 26.05.2015 for filing written statement of the petitioner/7th defendant. Since the petitioner did not file written statement, he was set as ex-parte in the suit on 26.06.2015. Therefore, he filed a petition in I.A.No.2 of 2022 to set aside the ex-parte order passed. Subsequently, the respondent/plaintiff filed an application in I.A.No.1 of 2022 for amendment and the said application was allowed. The I.A.No.2 of 2022 was dismissed by the trial Court stating that no sufficient reason was shown by the petitioner and the application was filed at the stage of argument. Hence, the present civil revision petition is filed.

3. The learned counsel appearing for the petitioner would submit that an application filed under Order 9 Rule 7 of C.P.C., which contemplates that the defendant on his appearance assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the day



fixed for his appearance. The petitioner could not be punished by denying his right to contest the very suit in which his valuable rights get involved.

The learned counsel would further submit that Order 9 Rule 7 of C.P.C., should be construed liberally in order to permit a party who remains ex-parte during the pendency of the suit to participate in the trial proceedings. While exercising power of putting the defendant on terms under Rule 7, the Court cannot pass an order which would have the effect of placing the defendant in a situation more worse off than what he would have been if he had not applied under Rule 7. Therefore, there is no limitation for filing the petition under Order 9 Rule 7 of C.P.C., but the limitation apply only for the setting aside the ex-parte decree under Order 9 Rule 13 of C.P.C. The very filing of the application under Order 9 Rule 7 of C.P.C., is maintainable.

4.To support his contention he has relied upon the following the decisions:

(1)In the case of ***N.Ramanathan and another-Vs-Meenakshisundaram***, reported in ***2001(4) CTC 8***.

(2)In the case of ***Vijaykumarmadan and Others-Vs-R.N.Gupta Technical Education Society and Others*** reported in ***(2002)3 CTC 359***.

(3)In the case of ***Valleeswari-Vs-Kamalakannan and Another***, reported in ***2010(1)MWN(Civil)581***.

(4)In the case of ***Satbir Singh Bakshi-Vs-Saroja & Others***, reported



in **2016-5-L.W.234**.

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5. On the other hand, the learned counsel appearing for the respondent would submit that though the petitioner has right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order 9 Rule 7 of C.P.C., makes that clear, therefore, unless he can show good cause, he must accept all that has gone before and the content to proceed from the stage at which he comes in. To support his contention he has relied upon the following decisions:

(1) In the case of ***Sangram Singh-Vs-Election Tribunal, Kotah and others***, reported in **(1955) 2 SCR 1**.

(2) In the case of ***Satbir Singh Bakshi -Vs-Saroja***, reported in **(2016) 7 MLJ 886**.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7. The suit in O.S.No.146 of 2014 filed before the Additional Sub-Court, Karur, was filed by the respondent/plaintiff, for partition in suit 'A' and 'B' schedule properties and for permanent injunction. The petitioner is the 7th defendant in the said suit. Thereafter, the case was posted for filing



written statement by the petitioner/7th defendant. He was set ex-parte for non-filing of the written statement. Hence, the petitioner filed an application in I.A.No.2 of 2022 under Order 9 Rule 11 of C.P.C and Section 151 of C.P.C., for setting aside the ex-parte order passed against him. The trial Court dismissed the said application stating that no sufficient reason attributed by the petitioner. An application filed under Order 9 Rule 7 of C.P.C., which contemplates that the defendant on his appearance assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the day fixed for his appearance. As rightly pointed out by the learned counsel for the petitioner that Rule is clear to the effect that on such terms of costs imposed the petition could be allowed. At the same time, while exercising power of putting the defendant on terms under Rule 7, while imposing costs it should be so assessed as would reasonably compensate the plaintiff for the loss of time and inconvenience caused by relegating back the the proceedings to an earlier stage. Since the trial Court proceedings are pending not much hardship will be caused to the plaintiff if the petitioner/7th defendant is permitted to contest in the trial proceedings. Relying the judgments referred by the learned counsel for the petitioner, it is made clear that there is no limitation for filing the petition under Order 9 Rule 7 C.P.C. There is no necessary condition for this case since the suit is pending and no exparte decree passed against this petitioner/7th defendant.



Therefore, the very filing of the application under Order 9 Rule 7 of C.P.C., is maintainable. The Hon'ble Supreme Court and this Court clearly held that even if the petitioner/7th defendant has not given any valid reason, opportunity can be given to the petitioner and permit him to take part in the proceedings at any stage of the proceedings.

8. In view of the above, this Civil Revision Petition is allowed by setting aside the order, dated 13.09.2022 passed in I.A.No.2 of 2022 in O.S.No.146 of 2014 by the learned Additional Subordinate Judge, Karur, on condition that the petitioner should pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent, within a period of two weeks from the date of receipt of a copy of this order. On such payment being made, the trial Court is hereby directed to dispose of the suit in O.S.No.146 of 2014, on merits and in accordance with law, by giving an opportunity to the petitioner as well as the defendant to put forth their contentions, within a period of four months thereafter. The petitioner and the respondent are directed to co-operate for early disposal of the suit within a period of four months. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

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



To

1.The Additional Sub-Court,
Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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