



CRP Nos.362, 364 and 353 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP Nos.353, 362 and 364 of 2024

T.Vasantha

... Petitioner in all CRPs

Vs.

K.Mangalakshmi

...Respondent in all CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in IA Nos.1, 2 and 3 of 2022 in OS No.279 of 2018 dated 07.07.2023 on the file of the Principal Subordinate Judge, Kanchipuram and pass orders.

For Petitioner

: Mr.P.Manikannan



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COMMON ORDER

The civil revision petitions are filed to set aside the fair and decreetal order made in IA No.1, 2 and 3 of 2022 in OS No.279 of 2018 dated 07.07.2023 on the file of the Principal Subordinate Judge, Kanchipuram and pass orders.

2. The revision petition is the plaintiff and the respondent is the defendant in OS No.279 of 2018 on the file of the learned Principal Subordinate Judge, Kanchipuram. The plaintiff has filed the suit for declaration against the defendant. In the said suit, ex parte decree was passed on 25.03.2019 against the respondent. Therefore, the respondent filed an application IA No.104 of 2021 to set aside the ex parte order, which was allowed on payment of cost of Rs.1000/- payable on or before 06.04.2022. Since the respondent had not complied with that order, the said application came to be dismissed. Thereafter, the first defendant/respondent filed applications in IA Nos.1, 2 and 3 of 2022 to condone the delay, to reopen the case for cost and for granting extension of time to pay the cost. Being a



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suit for declaration, filed against the defendants, the trial court, in paragraph No.11 of the order, considered the principle stated by the High Court in the case of *Pichammal and another versus Annamalai and another reported in 2008 (1) CTC 47* and in the case of *A.P.Subramanian versus P.Sivasamy and another reported in 2008(4)CTC 499*, and allowed the applications. Challenging the said common order, the petitioner has filed the present civil revision petitions.

3. Learned counsel for the petitioner contended that this Court has not followed the CPC and improperly allowed the applications.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The trial court, in paragraph No.11 of the order has recorded the reason for allowing the applications, which reads as under:

Learned counsel for the first defendant



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would place reliance on a decision of the Hon'ble Madras High Court vide Pichammal and another versus Annamalai and another reported in 2008 (1) CTC 47. In that case, a suit was dismissed for default on 31.10.2002. An application under Section 5 of the Limitation Act to condone the delay of 28 days in filing Order IX Rule 9 application was filed and allowed subject to payment of cost to be paid on 27.02.2003. The said IA was closed for non-compliance on 28.02.2003. Thereafter the petitioner therein sought extension of time under Section 148 of CPC to pay the costs which was dismissed. On challenging the said order the High Court held that the Court did not become functus officio and based on the decisions of the Hon'ble Apex Court it directed the trial court to restore the application to decide on merits. This decision was followed by the Hon'ble Madras High Court vide A.P.Subramanian versus P.Sivasamy and another reported in 2008(4)CTC 499.

6. In order to give a chance to the party to adjudicate the dispute between the parties completely, time has been extended to set aside the ex parte order. I find no infirmity in the order passed by the trial court. There is no ground to interfere with the order passed by the trial court. There is no merit in the Revisions. Hence, the civil revision petitions are dismissed. The



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trial court is directed to dispose the suit OS No.279 of 2018, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, CMP Nos.661, 679, 1652, 1694 and 1701 are closed.

26.02.2024

Index: Yes/No
Internet: Yes/No
mrn

V.SIVAGNANAM, J.



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