



C.R.P.No.4773 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4773 of 2024 &
CMP.No.26706 of 2024

D.Krishnamoorthy

.. Petitioner

Versus

S.Radhakrishnan

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 29.10.2024 in I.A.No.5 of 2024 in O.S.No.307 of 2022 pending on file of Principal District Judge at Namakkal.

For Petitioners : Mr.S.Varanesh

ORDER

This civil revision petition arises against the order of the learned Principal District Judge, Namakkal in I.A.No.5 of 2024 in I.A.No.4 of 2022 in O.S.No.307 of 2022 dated 29.10.2024.



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2. The defendant is the revision petitioner. O.S.No.307 of 2022 is a suit for recovery of a sum of Rs.17,72,750/- together with interest from the date of suit till the date of realisation.

3. On being served with summons, the defendant filed an application for rejection of plaint in I.A.No.4 of 2022.

4. This petition for rejection was called on 24.04.2024. Since both counsels were absent, the petition was dismissed for default. In order to restore the application, which had been dismissed for default, an application was filed in I.A.No.5 of 2024. To the said application, the learned counsel for the petitioner made the following endorsement:

“Petition may be allowed on heavy terms.

/Signed/

*Counsel for the respondent
29.10.2024”*

5. The learned Trial Judge, taking into consideration the arguments of the civil revision petitioner as well as the respondent, allowed I.A.No.5 of 2024 on condition that the civil revision petitioner pays a sum of Rs.5,000/-



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to the respondent. Challenging this condition, the present civil revision petition.

6. I have heard Mr.S.Varanesh for the civil revision petitioner.

7. Mr.S.Varanesh states that on the date when I.A.No.4 of 2022 was listed for hearing, it was posted for respondent's side arguments and hence, the civil revision petitioner was not present before the court. He states that on 24.04.2024 since the petitioner was not present, though he had argued the matter on 21.09.2023, the petition came to be dismissed for default. Therefore, he pleads that the imposition of Rs.5,000/- as cost is excessive, arbitrary and onerous.

8. I have considered the submissions of Mr.S.Varanesh.

9.The point remains that the petition in I.A.No.4 of 2022 had been dismissed for default. It was the civil revision petitioner, who moved an application under order IX Rule 9 of the Code of Civil Procedure, to have the said petition restored. The respondent had no objection for restoration subject to the payment of heavy costs.



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10. The learned Judge, taking into consideration the nature of the suit and the quantum of amount involved for recovery, has imposed cost of Rs.5,000/-. This is neither the cost in terms of Section 35 nor Section 35A for it to be limited for a sum of Rs.3,000/-. This is the cost, which the court imposed, for the purpose of restoration. Section 35 and Section 35A apply when the suit or application is dismissed for being vexatious or suffers from other vices. The principle of the aforesaid Sections cannot be telescoped onto Order IX Rule 9 of the Code of Civil Procedure. This is because under Order IX Rule 9(1) of the Code, a Court while allowing an application, can do so “upon such terms as to costs or otherwise as it thinks fit”. Hence, I am not inclined to consider this revision. This revision is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11. As the petitioner was pursuing his remedy before this court by way of this revision, I am inclined to extend the time granted by the learned Judge. The petitioner shall pay the amount within a period of two weeks from the date of receipt of a copy of this order.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Principal District Judge at Namakkal



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V.LAKSHMINARAYANAN, J.

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