



C.R.P.(PD)(MD)No.655 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2024

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THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.655 of 2020
and C.M.P.(MD)No.4302 of 2020

1.Mohamed Hanifa
2.Sikkandar Beevi

... Petitioners

Vs.

1.Banumathi
2.Renuka
3.Sumathi
4.Prasanth

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India praying to set aside the Fair and Decreetal Order dated 07-01-2020 passed in C.M.A.No.24 of 2018 on the file of the 1st Additional District Judge, Madurai confirming the judgment and decree dated 06-04-2018 passed in I.A.No.47 of 2018 in IA.No.484 of 2017 in O.S.No.391 of 2008 on the file of the 1st Additional Sub Court, Madurai (Melur Camp).



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For Petitioners : Ms.Swathini for
Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Anand Chandrasekar for
M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is directed against an order passed in C.M.A.No.24 of 2018, dated 07.01.2020 passed by I Additional District Judge, Madurai.

2. The petitioners herein were impleaded as defendants 4 and 5 in O.S.No.391 of 2008 on the file of Additional Sub Court, Madurai and subsequently, the plaintiff in the said suit got a plaint amended by order dated 11.08.2017. Thereafter, the matter was posted for filing written statement by the petitioners/defendants 4 and 5. As the petitioners/defendants 4 and 5 failed to file written statement by 10.11.2017, they were set *ex parte*. Thereafter, on 07.12.2017 the petitioners have filed I.A.No. 484 of 2017 under Order 9 Rule 7 of C.P.C. to set aside the said *ex parte* order along with the written statement. The said application was dismissed



by the learned trial Court, by order dated 03.01.2018, on the ground that there was no representation for the petitioners and the petitioners are called absent. This Court is really shocked to see such an order passed by the learned trial Court. When the suit was pending and an application under Order 9 Rule 7 was filed that too along with the written statement, the learned trial Court ought to have allowed the said application in a routine manner. However, dismissing such an application on the ground that there was no representation for the petitioners only shows the lack of judicial approach and anxiety for dispensation of justice on the part of the Officer concerned.

3. Be that as it may, the petitioners filed another application in I.A.No.47 of 2018 seeking restoration of I.A.No.484 of 2017, which was dismissed for default on 03.01.2018. However, the said I.A.No.47 of 2018 filed for restoring the I.A.No.484 of 2017 was also dismissed by an order dated 06.04.2018, on the ground that sufficient reasons are not given for non-appearance on 03.01.2018. Aggrieved by the said order dated 06.04.2018, the petitioners filed C.M.A.No.24 of 2018 before I Additional District Judge, Madurai. Unfortunately, the learned District Judge also



failed to appreciate the manner in proper perspective and carried away by the impression given by the learned trial Court in its order dated 06.04.2018 and dismissed the same on the ground that no sufficient cause is shown by the petitioners to restore the I.A.No.484 of 2017.

4. This Court is totally unhappy with the manner in which both the trial Court and lower appellate Court have acted in the facts and circumstances of the case. It is a simple case of considering an application under Order 9 Rule 7 of C.P.C. especially in the context of the fact that the said application was filed along with the written statement and remedying the ground on which they were set *ex parte*. In such peculiar situation, the learned trial Court itself ought to have allowed the said application by setting aside the *ex parte* order and the same would have facilitated the learned trial Court to proceed with the matter and dispose of the suit on merits. But for the erroneous approach of the learned trial Court as confirmed by the lower appellate Court, the proceedings are still pending. This Court is totally dissatisfied with the manner in which both the Courts have acted in the facts and circumstances of the case and placing the same on record inclined to exercise the jurisdiction of this Court under Article



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227 of the Constitution of India and accordingly, the order dated 10.11.2017 passed by the learned trial Court setting the petitioners /defendants 4 and 5 *ex parte* for want of filing written statement is set aside and the written statement filed along with I.A.No.484 of 2017 shall be taken on record and the learned trial Court is further directed to continue the further proceedings in the matter by duly affording an opportunity to the petitioners/defendants 4 and 5 to contest the suit. Registry is directed to communicate this order to both the Officers, who passed the order in I.A.No.484 of 2017 and the order in C.M.A.No.24 of 2018 for their information for future course of action.

5. Accordingly, this Civil Revision petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

NCC : Yes/No

Index : Yes/No

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MUMMINENI SUDHEER KUMAR, J.

vsm

To

1. I Additional District Judge, Madurai.
2. I Additional Sub Court, Madurai. (Melur Camp)
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

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