



C.R.P.(MD)No.1073 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1073 of 2020

Nallusamy

... Petitioner / Petitioner / Plaintiff

Vs.

1.Chinnasamy

2.Marimuthu

3.Periyasamy

4.Paramasivam

... Respondents / Respondents / Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records the fair order and decreetal order dated 11.07.2019 in I.A.No.2 of 2019 in O.S.No.295 of 2012 on the file of the Principal District Munsif, Thiruchirapalli and set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.A.Ramesh



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For R-1 & R-4 : Mr.Vinoth
For M.Subramanian

For R-2 : No appearance

For R-3 : Mr.S.Vinod Sathya Lazar

ORDER

This Civil Revision Petition came to be filed assailing the order passed by the learned Principal District Munsif, Trichirappalli in I.A.No.2 of 2019 in O.S.No.295 of 2012 dated 11.07.2019.

2. For the sake of convenience, the parties are referred herein as per their rank in the Original Suit.

3. The facts which led to the filing of this Civil Revision Petition is as follows:

The Original Suit in O.S.No.295 of 2012 on the file of the Principal District Munsif, Trichirappalli is one for partition. The petitioner in this Civil Revision Petition is the plaintiff in the Original Suit. One Paramasivam who is a subsequent purchaser of one of the items of the plaint schedule properties in



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O.S.No.295 of 2012, had filed another Civil Suit in O.S.No.77 of 2015 on the file of III Additional District Munsif, Tiruchirappalli. Since both the suits are connected matters Transfer O.P.No.7 of 2016 was filed by the plaintiff before the Principal District Judge, Tiruchirappalli and the same was allowed on 07.09.2016, permitting joint trial of both the suits. However, the bundle in O.S.No.77 of 2015 on the file of III Additional District Munsif, Trichirappalli, was untraceable. Hence, left with no other option, the learned Trial Court proceeded with the suit in O.S.No.295 of 2012 and the same came to be dismissed for default on 03.03.2017 for the non-appearance of the plaintiff herein. As such, the plaintiff filed I.A.No.916 of 2017 to restore the suit which was dismissed on 03.03.2017 and the same was allowed on 22.01.2018 on payment of cost of Rs.2,000/- (Rupees Two Thousand only) to be paid, on or before 30.01.2018. Since the plaintiff failed to pay the said cost of Rs.2,000/- (Rupees Two Thousand only), the same came to be further dismissed for default of payment of cost of Rs.2,000/- (Rupees Two Thousand only) on 31.01.2018. While so, the plaintiff filed yet another Interlocutory Application in I.A.No.315 of 2018 under Order IX Rule 9 of Civil Procedure Code, 1908, to set aside the dismissal order, dated 31.01.2018 on the file of Principal District



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Munsif, Trichirappalli. However, the learned Trial Court observing that the plaintiff ought to have filed an application for extension of time for payment of cost under Section 148 of Civil Procedure Code, 1908. However, erroneously he had preferred to file an application under Order IX Rule 9 of Civil Procedure Code, 1908, which is not maintainable and on that ground, the said I.A came to be dismissed on 22.06.2018. Thereafter, the plaintiff filed I.A.No.2 of 2019 under Section 151 of the Civil Procedure Code, 1908, seeking extension of time for payment of cost, as per the order in I.A.No.916 of 2017 for payment of cost. The same came to be dismissed on 11.07.2019. Assailing the same, the present Civil Revision Petition came to be filed before this Court.

4. The learned counsel appearing for the petitioner submitted that, on dismissal of I.A.No.916 of 2017 which was allowed by the learned Trial Court on 22.01.2018, for the failure to comply with the condition to pay a cost of Rs. 2,000/- (Rupees Two Thousand only) on or before 30.01.2018, it was only on the guidance of the Trial Court Advocate, the plaintiff had filed I.A.No.315 of 2018 to set aside the order dated 31.01.2018, under Order IX Rule 9 of Civil Procedure Code, 1908. However, the same came to be dismissed on 22.06.2018



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for the reason that the application ought to have been filed under Section 148 of Civil Procedure Code, 1908, and not under Order IX Rule 9 of Civil Procedure Code, 1908. On perusal of the said dismissal order, further, the plaintiff instructed the Trial Court Advocate to file an application in I.A.No.2 of 2019 seeking extension of time for payment of cost under Section 151 of Civil Procedure Code, 1908, in I.A.No.916 of 2017. Even thereafter, the Trial Court Advocate had filed an application only under Section 151 of code of Civil Procedure Code, 1908, leaving out Section 148 in the application. The learned Trial Court citing laches as a main defect had observed that, on 01.12.2018 after a laches of six months, i.e., from 22.06.2018, that is, the date of dismissal of I.A.No.315 of 2018, the plaintiff has filed I.A.No.2 of 2019 seeking extension of time to pay cost as per order in I.A.No.315 of 2018.

5. The learned Trial Court further observed that, there is no valid reason or sufficient cause or events which would explain the petitioner's recklessness in non-compliance of the aforesaid order. Though it is submitted by the plaintiff that, he had met his counsel at Madurai Bench of Madras High Court to prefer an appeal, by which time, the counsel had advised to file a fresh application for



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extension of time before the learned Trial Court cannot be a fair reason and the same cannot be taken as an explanation which is beyond the control of the plaintiff. Hence, on the reason of laches / inordinate delay of six months I.A.No.2 of 2019 came to be dismissed.

6. The learned counsel appearing for the petitioner relying upon the case of ***Gowri ammal .vs. Murugan, Anbu, Sekar and Saroja dated 25.04.2006 reported in (2006) 2 MLJ 729*** contended that, the learned Trial Court has ample power to extend the time in an application filed under Section 148 r/w Section 151 CPC. He further pointed out that, an innocent litigant should not be penalised for the fault of the Advocate and on that ground pressed for allowing the Civil Revision Petition.

7. The learned counsel appearing for the 3rd respondent submitted that the petitioner's arguments with respect to the dismissal of I.A.No.315 of 2015 cannot be permitted before this Court because nothing of that kind had been pleaded in the grounds of this Civil Revision Petition. That apart, none of the arguments raised by the learned counsel appearing for the petitioner finds place



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in the grounds and on that basis pressed for dismissal of the Civil Revision Petition.

8. The learned counsel appearing for the respondents 1 and 4 vehemently contended that the plaintiff from the first instance of filing the Original Suit in O.S.No.295 of 2012 had never conducted the suit diligently before the learned Trial Court. He further contended that the learned Trial Court in para 8 of the order passed in I.A.No.315 of 2018 has held that, the order passed in I.A.No. 916 of 2017 has reached its finality and hence, I.A.No.315 of 2018 is not maintainable in law. The petitioner having not preferred to challenge the order passed in I.A.No.315 of 2018, the same had reached its finality and hence, now the petitioner cannot take an “U” turn and file yet another application in I.A.No. 2 of 2019 seeking extension of time for payment of cost in I.A.No.916 of 2017. That apart, he has not approached this Court with clean hands and hence, the Civil Revision Petition is liable to be dismissed.



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9. Heard, the learned counsel appearing for the petitioner, the learned counsels appearing for the respondents and carefully perused the materials available on record.

10. No doubt, as rightly contended by the learned counsels for the respondents, a careful analysis of the way in which, the counsel for the plaintiff before the Trial Court had conducted the case would throw light on the fact that the case has been conducted before the learned Principal District Munsif, Trichirappalli, in an unscrupulous manner. The learned Trial Court had allowed I.A.No.916 of 2017 on 22.01.2018 on condition of payment of cost of Rs. 2,000/- (Rupees Two Thousand only) on or before 30.01.2018. Only on default of payment of cost on the said date, the suit came to be dismissed on 31.01.2018. Obviously, the learned Trial Court Lawyer for the petitioner ought to have preferred a Civil Miscellaneous Appeal as against the said order, instead he preferred I.A.No.315 of 2018 to set aside the aforesaid order under Order IX Rule 9 of the Code of Civil Procedure, 1908 which is not at all maintainable in the facts and circumstances of the case before the learned Trial Court.



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11. Hence, rightly the same came to be dismissed on 22.06.2018 categorically observing that the order passed in I.A.No.916 of 2017 on 22.01.2018 has attained its finality, since the same has not been challenged by the plaintiff in the manner known to law. Even thereafter, having obtained an advice from a High Court Lawyer in this regard, immediately to save the case before the learned Trial Court, yet another application in I.A.No.2 of 2019 came to be filed by the plaintiff under Section 151 of the Code of Civil Procedure, 1908 without incorporating Section 148 of CPC. Though the learned Trial Court has not touched the point of the application being not filed under Section 148, on the ground of laches, the same came to be dismissed on 11.07.2019. Especially, the Trial Court fully found the ground to dismiss the same on the fact that the plaintiff took more than six months from 22.06.2018 to file an application in I.A.No.2 of 2019 on 01.12.2018.

12. The learned counsel appearing for the petitioner smartly pointed out that this Civil Revision Petition itself has been filed after a laches of one year. However, considering the fact that the Original Suit which came to be dismissed was one for partition and yet another suit in O.S.No.77 of 2015 on



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the file of III Additional District Munsif, Trichirappalli, a connected matter was already directed by the learned Principal District Judges Court in Tr.O.P.No.7 of 2016 on 07.09.2016 for joint trial to be conducted along with O.S.No.295 of 2012, in the instant case in hand, the learned Trial Court should not have hurried to dismiss the suit for non appearance of the plaintiff even before O.S.No.77 of 2015 on the file of III Additional District Munsif, Trichirappalli, came to be clubbed along with O.S.No.295 of 2012 on the file of Principal District Munsif, Trichirappalli.

13. In view of the same, I am of the considered opinion that, an innocent litigant should not be penalized for the laches and inefficiency of an unscrupulous lawyer who is legally unsound. This proposition of law has been settled by various precedents, few of which are:

i) In ***Tamilselvi Vs. A. Ramya and Ors. reported in MANU/TN/5565/2020***, this Court observed as follows:

“It is also well settled by the Hon'ble Supreme Court in Raifq and another vs. Munshilal and another, reported in AIR 1981 SC 1400, which ratio followed in various judgments of this Court held that an



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innocent party shall not suffer injustice merely because his chosen advocate defaulted.”

ii) In ***Ashok Kumar Vs. New India Assurance Co. Ltd., reported in AIR 2023 SC 3622***, the Hon’ble Apex Court held that

“However, for the fault of the advocate, the complainant could not be made to suffer”.

iii) In ***T. Udhaykumar Vs. The Union of India and Ors., reported in MANU/TN/7765/2022***, the Hon’ble Division Bench of this Court held that,

“accepting the bona fide reasons, in the light of the settled legal position that a litigant should not suffer for the fault committed by the Advocate, as the appellant who is aspiring to pursue the medical course during the academic year 2022-23, we are inclined to entertain the writ appeal”.

14. Accordingly, the order passed by the learned Trial Court in I.A.No.2 of 2019 dated in O.S.No.295 of 2012 on the file of Principal District Munsif is hereby set aside and the plaintiff is directed to pay a cost of Rs.10,000/- (Rupees Ten Thousand only) before the learned Trial Court in I.A.No.916 of



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2017 within a period of two (2) weeks from the date of receipt of a copy of this order. On payment of the said cost, the learned Trial Court is directed to restore O.S.No.295 of 2012.

15. Accordingly, this Civil Revision Petition is allowed. In case of default of payment of cost by the plaintiff as directed supra, this order will not have any effect.

04.07.2024

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

To

1. The Principal District Munsif,
Thiruchirapalli.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Sml

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