



C.R.P.(MD)No.92 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2023

Delivered on : 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD)No.92 of 2023

and

C.M.P(MD)No.439 of 2023

M.Premkumar : Petitioner/Petitioner/Defendant

Vs.

C.Anbalagan : Respondent/Respondent/Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to call for the records relating to the fair and decreetal order, dated 20.10.2022 made in I.A.No.6 of 2022 in O.S.No.78 of 2016 on the file of the Additional District Judge, Dindigul and set aside the same.

For Petitioner : Mr.J.Anand Kumar

For Respondent : Mr.J.Antony Arul Raj



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.6 of 2022 in O.S.No.78 of 2016, dated 20.10.2022 on the file of the Additional District Court, Dindigul, dismissing the petition filed under Order IX Rule 13 of the Code of Civil Procedure.

2. The respondent as plaintiff has filed the suit in O.S.No.78 of 2016, for specific performance of the agreement, dated 01.09.2014.

3. The case of the revision petitioner/defendant is that the case was adjourned to 25.02.2022 for cross examination of the plaintiff and for payment of cost of Rs.500/- to the plaintiff; that since the revision petitioner/defendant went to the hospital as he was not well, could not attend the Court for the purpose of cross examination and for payment of cost; that the defendant was set ex-parte on 25.02.2022; that the plaintiff side witness was examined on 02.03.2022 and ex-parte judgment and decree was passed on 03.03.2022 and that therefore, the defendant was constrained to file the above application under Order IX Rule 13 C.P.C., seeking orders for setting aside the ex-parte judgment and decree passed



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on 25.02.2022 or else the defendant will be put to irreparable loss and hardship.

4. The respondent/plaintiff has filed a detailed counter affidavit raising serious objections and further stated that the petition to set aside the ex-parte decree was filed for the third time; that the defendant's earlier two applications were allowed and thereby setting aside the ex-parte decrees passed earlier and permitted the defendant to take part in the proceedings; that the defendant has neither averred nor produced any evidence with regard to his alleged ill-health canvassed as the reason for his non-appearance on that particular day; that the plaintiff has already laid the execution petition and the same is pending and that the above petition has been filed only to protract the execution proceedings.

5. During enquiry, the plaintiff and the defendant have adduced neither oral nor documentary evidence. The learned Additional District Judge, upon considering the pleadings of the parties and the records available on record and on hearing the arguments of both sides, has passed the impugned order, dated 20.10.2022, dismissing the petition filed under



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Order IX Rule 13 C.P.C. Aggrieved by the dismissal order, the present revision came to be filed.

6. Before entering into further discussion, it is necessary to refer the events happened sofar before the trial Court.

7. Since the defendant has not chosen to file the written statement, despite taking sufficient time, he was set ex-parte on 07.03.2017 and subsequently, ex-parte judgment and decree came to be passed on 20.04.2017. The decree holder has then laid the execution petition in E.P.No.68 of 2017 for execution of sale deed in pursuance of the decree and judgment, dated 20.04.2017. Meanwhile the defendant has filed an application under Section 5 of the Limitation Act in I.A.No.125 of 2017 to condone the delay of 79 days in filing the application for setting aside the ex-parte judgment and decree, dated 20.04.2017.

8. When the petition in I.A.No.125 of 2017 was pending in part heard stage, since the defendant has not turned up and as there was no representation for the defendant, the petition in I.A.No.125 of 2017 was



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ordered to be dismissed for default on 19.04.2018. Thereafter, the defendant has filed an application in I.A.No.54 of 2018 to restore the petition in I.A.No.125 of 2017, which was dismissed for default and vide order, dated 12.07.2018, the petition in I.A.No.54 of 2018 was ordered to be allowed and the petition in I.A.No.125 of 2017 was ordered to be restored. I.A.No.125 of 2017, after enquiry, was allowed on 10.09.2018 and thereafter, the defendant's petition filed under Order IX Rule 13 C.P.C., for setting aside the ex-parte decree was taken on file in I.A.No.170 of 2018 and the same was allowed on 09.11.2018.

9. The plaintiff was examined on 04.03.2021 and the case was posted for cross examination on 11.03.2021 and after granting five more adjournments, the defendant has not turned up for cross examination of P.W.1 and as there was no representation for him, he was again set ex-parte on 15.04.2021 and subsequently, the case was adjourned to 30.06.2021 for judgment.

10. The defendant has then filed two applications one in I.A.No.2 of 2021 to reopen the case and another petition in I.A.No.3 of 2021 for



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setting aside the ex-parte order and the said petitions were allowed on 07.09.2021. When the case was posted again for cross examination of P.W.1, after taking 11 adjournments, the defendant has not chosen to cross examine the plaintiff and hence the defendant was again called absent and set ex-parte and posted to 02.03.2022 for arguments.

11. Meanwhile, the plaintiff has filed an application to amend the plaint for claiming the alternative relief in I.A.No.107 of 2019 and the defendant after taking 7 adjournments, has not chosen to file the counter statement and he was set ex-parte on 30.01.2020 and again he has filed an application in I.A.No.69 of 2020 for setting aside the ex-parte order and the same was allowed. Thereafter, the amendment petition in I.A.No.1 of 2019 was ordered to be allowed on 02.12.2020 and the defendant has then preferred a revision in C.R.P.(MD)No.1418 of 2021, challenging the order passed in I.A.No.107 of 2019 and the revision petition was ordered to be dismissed on 09.11.2021.

12. When the case was again adjourned for cross examination of P.W.1 on 15.02.2022, the defendant has filed an application to adjourn the



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case and the same was allowed by imposing a cost of Rs.500/- and directed the defendant to pay the cost on or before 24.02.2022 and directed him to cross examine P.W.1 on 25.02.2022 and on his failure, he will be set ex-parte. Since the defendant has not turned up and he has not paid the cost and as there was no representation for the defendant, he was again set ex-parte on 25.02.2022 and thereafter, the judgment and decree came to be passed on 25.02.2022.

13. As rightly contended by the learned counsel for the respondent, the defendant in the petition filed in I.A.No.6 of 2022 has sought for setting aside the ex-parte judgment and decree passed on 25.02.2022. But admittedly, the judgment and decree came to be passed only on 03.03.2022 and the defendant was set ex-parte on 25.02.2022. Though the defendant has invoked Order IX Rule 13 C.P.C., he has claimed the relief of setting aside the ex-parte order passed on 25.02.2022.

14. No doubt, the defendant is entitled to file an application under Order IX Rule 7 of C.P.C., for setting aside the ex-parte order till ex-parte decree is passed in the main suit. But once, ex-parte judgment and decree



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is passed, then the defendant is certainly not entitled to invoke Order IX Rule 7 C.P.C., for setting aside the ex-parte order. Technically speaking, if the petition is considered as the one filed for setting aside the ex-parte order, dated 25.02.2022, since the ex-parte decree has already been passed, the present application cannot be entertained at all.

15. As rightly contended by the learned counsel for the respondent, the defendant in the affidavit has alleged that the ex-parte judgment and decree came to be passed on 03.03.2022, he has not chosen to claim any relief for setting aside the ex-parte judgment and decree, dated 03.03.2022 in the said petition nor filed any other separate petition for the same.

16. Even assuming for argument sake that he has only sought the relief of setting aside the ex-parte decree, even according to the defendant, has has canvassed only one reason i.e., ill-health. Admittedly, the defendant has not canvassed any reason for not attending the Court subsequent to 25.02.2022 till 03.03.2022 and for not filing any application under Order IX Rule 7 C.P.C. Moreover, though the defendant has alleged that he went to Hospital for his ill-health on 25.02.2022, in his affidavit, he has not elaborated anything further.



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17. As rightly contended by the learned counsel for the respondent, the defendant has nowhere whispered about the nature of his ill-health, period of treatment and the hospital where he was taken treatment. Admittedly, the defendant has not produced any iota of evidence to prove his ill-health. Except the above, he has not canvassed any other reason or ground.

18. It is not in dispute that subsequent to the ex-parte decree passed on 03.03.2022, the decree holder has again laid the second execution petition in E.P.No.158 of 2022; that the defendant has entered into appearance and filed his counter and that the execution petition is pending for arguments. Considering the entire facts and circumstances of the case, this Court has no hesitation to hold that the defendant has only been attempting to protract the proceedings. Hence, this Court concludes that the impugned order dismissing the petition filed under Order IX Rule 13 of C.P.C., cannot be found fault with.



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19. In the result, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous petitions are closed. No costs.

02.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Principal District Munsif, Karur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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and
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Dated : 02.02.2024