
(2013) 07 MAD CK 0178

Madras High Court

Case No: Civil Revision Petition (NPD) No. 2459 of 2013 and M.P. No. 1 of 2013

A. Thamim Ansar
Rahman

APPELLANT

Vs

Motichand, Manjula and
A.M.E. Abdul Rahman

RESPONDENT

Date of Decision: July 25, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 9, 151

Citation: (2013) 07 MAD CK 0178

Hon'ble Judges: K. Ravichandrabaabu, J

Bench: Single Bench

Advocate: K. Selvaraj, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandrabaabu, J.

This civil revision petition is filed challenging the order passed by the Court below in E.A. No. 45 of 2013 whereby, the application filed by the petitioner under Order IX, Rule 9 and Section 151 of CPC seeking for restoration of E.A. No. 89 of 2012, was rejected. Notice was order in this civil revision petition to the respondents both through the Court as well as privately. Private notice sent to them was served on 10.7.2013 and proof affidavit is also filed. Their names are printed in the cause list but none appeared for them.

2. Heard Mr. K. Selvaraj, learned counsel appearing for the petitioner.

3. The petitioner, as the claimant, filed E.A. No. 89 of 2012 in E.P. No. 14 of 2012 in O.S. No. 25 of 2008 on the file of the District Judge, Nagapattinam. The said E.A. No. 89 of 2012 came to be dismissed for default on 12.3.2013. Within 30 days, (i.e.) on 08.4.2013,

the petitioner filed E.A. No. 45 of 2013 under Order IX, Rule 9 CPC seeking to restore E.A. No. 89 of 2012. It is the contention of the petitioner that he was away from the country, on the date when his application was dismissed for default and only on 04.4.2013, he came to India and immediately, on knowing about the order passed on 12.3.2013, he filed the application seeking to restore the E.A. No. 89 of 2012. When the application was filed on 08.4.2013, surprisingly, the Court below passed an order in the said application on the very same day without issuing notice on the other side and hearing the matter on merits. Admittedly, there is no delay in filing the application. Thus, the said application filed under Order IX, Rule 9 CPC ought to have been considered on merits by the Court below. A perusal of the order passed by the Court below would show that it has not taken into consideration any of the contention raised by the petitioner in the affidavit filed in support of the application. On the other hand, it has mechanically rejected the same. In my considered view, the said order passed by the Court below is not sustainable in the eye of Law and consequently, the said order dated 08.4.2013 is set aside. Thus, the matter is remitted back to the Court below for hearing the application in E.A. No. 45 of 2013 on merits and in accordance with law, after giving due opportunity to both sides, as expeditiously as possible.

This civil revision petition is allowed with the above observations. Consequently, M.P. No. 1 of 2013 is closed. No costs.