

(2009) 10 MAD CK 0299

Madras High Court

Case No: C.R.P. (NPD) No. 3120 of 2009 and M.P. No. 1 of 2009

La. Valliappan

APPELLANT

Vs

1. P. Subramanian, 2. S.

RESPONDENT

Ravikumar, 3. S. Senthilkumar

Date of Decision: Oct. 28, 2009

Citation: (2010) 1 MLJ 911

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: G. Prabhakar, for the Appellant; N. Manokaran, For RR 1 and No appearance,
For RR 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The petitioner/respondent/plaintiff has preferred this civil revision petition as against the order dated 02.07.2009 in I.A.No.454 of 2008 in O.S.No.184 of 2005 passed by the learned II Additional Subordinate Judge, Coimbatore in passing an order on condition that the application I.A.No.454 of 2008 filed by the respondents/petitioners/defendants will be allowed on payment of cost of Rs.2,000/- to be paid on or before 28.07.2009 and the matter has been directed to be called on 29.07.2009. The learned counsel for the revision petitioner/ plaintiff contends that the trial Court has not assigned valid reasons for setting aside the exparte decree application and the award of costs as penalty will not cure the defect in allowing the application and further the trial Court should have seen that the present application I.A.No.454 of 2008 has been filed after a lapse of 3 years from the date of passing of the exparte decree and in fact, the respondents/petitioners/defendants in I.A.No.454 of 2008 have not assigned sufficient cause for getting the ex parte decree set aside and added further, the objections of the revision petitioner/plaintiff has not been adverted to by the trial Court and in short, the order of the trial Court is

clearly an abuse of process of law and the same is unsustainable and therefore, prays for allowing the civil revision petition in the interest of justice.

2. It is to be noted that the respondents/petitioners/ defendants have filed I.A.No.454 of 2008 before the trial Court praying to condone the delay of 831 days in filing an application to set aside the exparte preliminary decree dated 14.10.2005. In the said affidavit, the first respondent/first defendant has averred among other things that due to his ill health and old age, he has been suffering from jaundice and taking a treatment at Kerala and also taking Nattu vithiam and since he has not been attending his Advocate's office and he has not followed the suit and therefore, his non filing of written statement has been due to his ill health and not due to his carelessness, negligence and therefore, has prayed for allowing the application.

3. In the counter filed by the revision petitioner/ decree holder before the trial Court, the specific plea has been taken that the present application I.A.No.454 of 2008 has been projected with a view to precipitate and procrastinating the legal proceedings and in fact, the respondents/petitioners/defendants have not explained each and every days delay and in fact, the averments in the affidavit in I.A.No.454 of 2008 are not referring to the specific reasons in a proper manner and therefore, has prayed for dismissal of the application.

4.This Court has heard the contentions of the learned counsel appearing on either side and noticed the same.

5.At this stage, it is useful to refer to the order passed by the trial Court in I.A.No.454 of 2008 dated 02.07.2009 which runs hereunder:

"Heard. Both considered, with a view to give an opportunity of the petitioner to putforth his claim the petition will be allowed on payment of cost of Rs.2,000/- to be paid on or before 29.7.09 call on 29.7.2009."

6. On going through the order passed by the trial Court in I.A.No.454 of 2008, this Court is of the considered view that the said order is a non speaking or a less speaking order and indeed, it is bereft of both quantitative and qualitative details and by and large an order of a Court of Law should reflect the appearance of justice and in the present case, this Court is of the considered view that the trial Court has not adverted to the merits and demerits of the matter by canvassing the averments made in affidavit and counter affidavit in a reasoned manner while arriving at a conclusion and in short, it has passed a cryptic order thereby perforcing this Court to interfere with the order passed by the trial Court in the interest of justice and accordingly, this Court finds that the order passed by the trial Court in I.A.No.454 of 2008 suffers from material irregularity coupled with patent illegality and accordingly, this revision petition is allowed to prevent an aberration of justice. In the result, the Civil Revision Petition is allowed. The order passed by the trial Court in I.A.No.454 of 2008 is set aside. The trial Court is directed to restore the I.A.No.454 of 2008 on its file within two weeks from the date of receipt of copy of this order and

after providing due opportunities to both parties and is further directed to pass appropriate orders in the manner known to law and in accordance with law and to report compliance before this Court without fail. No costs. Consequently, connected miscellaneous petition is closed.