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Arunagirinathan Vs Ganapathy

C.R.P. (NPD).No. 1169 of 2011 and M.P. No. 1 of 2011

Court: Madras High Court

Date of Decision: Dec. 3, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 18

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.
This revision is preferred against the order passed by the learned District Munsif, Chengam, dated 29.09.2010 in

I.A. No.12 of 2008 in A.S. No.92 of 2006 dismissing the petitioner for default.

2. The respondent/ plaintiff instituted a suit against the petitioner/ defendant for recovery of money based on a pro-note dated 10.12.2003

executed by the defendant in favour of the plaintiff. The defendant filed the written statement denying the execution of the pro-note. Subsequently,

the petitioner/ defendant remained absent and as a result, an ex-parte decree was passed against him on 17.11.2006. Thereafter, the petitioner

filed an application in I.A. No.12 of 2008 to set aside the ex-parte decree passed against him on 17.11.2006 on the ground that he was suffering

from severe jaundice which prevented him to appear before the Court on the date of hearing. In the said petition, he had wrongly mentioned the

date of decree as 16.11.2006 instead of 17.11.2006. Therefore, he filed another application in I.A. No.71 of 2009 to permit him to amend the

date of decree which was allowed by the learned District Munsif, by order dated 24.12.2009. However, no specific time was granted to carry out

the amendment. The said application in I.A. No.12 of 2008 was posted for carrying out the amendment on various dates but no amendment was

carried out by the petitioner, despite several opportunities granted to him. It is seen from the docket entry filed by the petitioner that nearly for 9

months, the matter has been adjourned periodically for the purpose of carrying out the amendment. However, no steps had been taken by the

petitioner. Finally, on 29.09.2010 as the petitioner''s counsel reported no instruction, the said petition for permission to carry out the amendment

was dismissed for default on the said date. As against which, the present revision has been filed by the petitioner/ defendant.

3. Heard Mr.S.Doraisamy, learned counsel for the petitioner as well as Mr.P.Mani, learned counsel appearing for the respondents.

4. Undisputedly, the order of amendment was passed allowing the petitioner to correct the date of decree on 24.12.2009. It is no doubt true that

no specific time is granted for carrying out the amendment.

5. Mr.P.Mani, learned counsel appearing for the respondent is right in his legal point about the effect of not carrying out the amendment order as

per Order 6 Rule 18 of C.P.C. which is set out hereunder.

Where any party has obtained an order to amend and amendment is extensive, within a time limited for that purpose by the order, or if no time is

thereby limited, then within fourteen days from the date of the order, she shall file a consolidated pleading incorporating the amendments, and he

shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is

extended by the Court.

6. It is clear that if no time limit is prescribed the amendment should be carried out within 14 days from the date of passing of the order allowing the

amendment. The petitioner failed to amend the plaint though the time was extended on several occasions by the trial Court. The petitioner has not

taken any steps to carry out the amendment for several months after the order permitting amendment and thereafter, when the petition was posted

finally, learned counsel reported no instructions from his party which necessitated the trial Court to dismiss the petition for default. It is pertinent to

note that subsequent to the decree passed by the trial Court, the respondent/ decree holder filed the execution petition before the executing court

and the property was also sold in execution of the decree.

7. It is purely a gross negligence on the part of the counsel as well as the party and the latter cannot put the blame on the counsel as it appears that

the party has not contacted his counsel for nearly nine months. Under such circumstances, having regard to the mandatory nature of the language

incorporated in the said Rule, the petitioner cannot take advantage of the order of amendment and the trial court has rightly dismissed the

application for default.

8. I do not find any merits in the civil revision petition. Therefore, the civil revision petition stands dismissed. No costs. Consequently, connected

miscellaneous petition is closed.