

(2012) 04 MAD CK 0025

In the Madras High Court

Case No : C.R.P. (NPD) . No"s. 1514 and 1361 of 2012 and MP. No"s. 1 and 1 of 2012

M. Madhu

APPELLANT

Vs

L. Mahalingam

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2012) 4 MLJ 450

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G. Kumud Jhabakh, for the Appellant; S.K. Rakunathan, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the order passed by the learned Subordinate Judge, Nilgiris at Ootacamund in (i) I.A. No. 164 of

2012 in I.A. No. 295 of 2011 in O.S. No. 143 of 2010 dated 4.4.2012 and (ii) I.A. No. 295 of 2011 in O.S. No. 143 of 2010 dated

15.2.2012, these civil revision petitions are focussed. The parties are referred to hereunder according to their litigative status and ranking before

the lower Court.

2. The epitome and the long and short of the relevant facts absolutely necessary and germane for the disposal of these two revisions would run

thus:

The respondent-father of the revision petitioner filed the suit seeking the following reliefs:

(a) Directing the defendant to deliver possession of the suit property to the plaintiff, described in the schedule below;

(b) Directing the defendants to pay the damages for use and occupation at the rate of Rs. . 1,000/- per month from 7.8.2007 to 7.8.2010 of Rs. .

36,000/- and future damages for use and occupation at the same rate till delivery of possession to the plaintiff; and (c) For costs." (extracted as such)

3. No written statement was filed till 7.1.2011 by the son, the revision petitioner herein, despite opportunities having been given by the Court to file

such written statement on cost of Rs. . 100/-. The suit summons was received by the revision petitioner on 13.9.2010. Because of the delay in

filing the written statement, the Court set the defendant ex parte on 7.1.2011 and the decree was passed on 28.1.2011. Subsequently, I.A. No.

295 of 2011 was filed within the limitation period of thirty days to get the ex parte judgment and decree set aside. Counter was filed by the

respondent herein. After hearing both sides, the lower Court allowed the application subject to the condition that a sum of Rs. . 81,512/- should be

deposited by the revision petitioner herein along with cost of Rs. . 3,000/- as condition precedent for participating in the proceedings. Thereafter, it

appears I.A. No. 164 of 2012 was filed for getting the time extended for complying with the said order and that was rejected. Being aggrieved by

and dissatisfied with the aforesaid two orders, these two revisions have been filed.

4. The learned counsel for the petitioner would submit that imposition of such onerous condition on the part of the lower Court is against law and

before adjudging the cause on merit, the revision petitioner/defendant was compelled to pay the entire suit claim relating to damages for use and

occupation including the costs.

5. Whereas, the learned counsel for the respondent would put forth and set forth his arguments to the effect that the revision petitioner being the

son, failed to respect the order of the Court by filing written statement on or before 7.1.2011 by paying a sum of Rs. . 100/- as cost. Thereafter

alone, the Court after understanding the conduct of the defendant in not complying with the Court order set him ex parte on 7.1.2011 and passed

the ex parte decree on 28.1.2011. There is no hard and fast rule that a condition similar to that of the one, passed by the lower Court, should not

be imposed, so as to sensitise and make the defendant more responsible in the

litigative process.

6. The point for consideration is as to whether the condition imposed by the lower Court as found set out supra is tenable and whether the

subsequent order dated 4.4.2012 passed in I.A. No. 164 of 2012 is also legal?

7. The whole kit and caboodle of facts which could be understood and inferred from the records, is that according to the plaintiff -the respondent

herein, he permitted his son to occupy a portion of the property as a licensee. Subsequently, he cancelled his licence and called upon him to vacate

by 2007 itself. Since he refused to vacate, he filed the suit for getting him evicted and also for recovering from him the damages for use and

occupation. However, the son would contend that he is having right to occupy the suit property as a co-sharer. Be that as it may, at present this

Court is not concerned with all those details, but one fact is clear that the lower Court went to the extent of directing the defendant to pay the entire

claim relating to damages for use and occupation as a condition precedent for getting the ex parte decree set aside. Ex facie and prima facie, I

could see no legal back up for such an order. It is a trite proposition of law, that the Court could impose certain conditions at the time of setting

aside the ex parte decree, but it should not be onerous and it also should not give an impression that the Court pre-judged the case of the plaintiff.

Here, I could see considerable force in the contention of the revision petitioner that the Court by mandating the defendant to deposit the entire sum

relating to the damages for use and occupation, decided as though he is liable to pay the entire sum.

8. Taking into account the relationship between the parties and that without any delay the application under Order 9 Rule 13 of CPC was filed, I

am of the view that the lower Court need not have passed such onerous condition. Imposition of cost is one thing but mandating the defendant to

deposit the entire suit claim and that too in the facts and circumstances of the case, is yet another which is not legal.

9. The learned counsel for the respondent would also submit that the reason found set out in the affidavit accompanying the application for getting

the ex parte decree set aside is far from satisfactory and it cannot be labelled as a reason much less sufficient reason.

10. No doubt there should be sufficient reason for setting aside the ex parte

decree. This is a case relating to immovable property and that too, between father and son and as such, I do not want to take a strict view of the matter and simply deprive the defendant of his entitlement to contest the suit. If such onerous condition is upheld, certainly that would amount to preventing the defendant from prosecuting his defence effectively.

Wherefore, in view of the facts discussed supra, the onerous condition, namely mandating the defendant to deposit a sum of Rs. . 81,512/- should be set aside and accordingly it is set aside. Regarding the cost is concerned, that could be enhanced from Rs. . 3,000/- to Rs. . 5,000/-payable by the defendant to the plaintiff, because as correctly pointed out by the learned counsel for the respondent/plaintiff, the first opportunity given to the defendant to file the written statement on or before 7.1.2011 was not utilised. The cost be paid within period of fifteen days from this date; whereupon the trial Court shall proceed with the matter and the same shall be disposed of as expeditiously as possible, preferably within a period of four months.

The civil revision petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.