
(2013) 02 MAD CK 0027

In the Madras High Court

Case No : C.R.P. (MD) No. 137 of 2013 (NPD) and MP. (MD) No. 1 of 2013

P. Vadamulammal

APPELLANT

Vs

O. Meenakshisundaram

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 4 MLJ 44

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : D. Sadiqraja, for the Appellant; B. Rajesh Saravanan, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner herein is the defendant in O.S. No. 359 of 2004 before the District Munsif-cum-Judicial Magistrate,

Bodinayakanur. He remained ex-parte on 19.2.2009 and ex-parte decree was passed on 19.2.2009. He filed an application in I.A. No. 86 of

2009 in O.S. No. 359 of 2004 in time to set aside the ex-parte decree. The Trial Court allowed I.A. No. 86 of 2009 in O.S. No. 359 of 2004 on

9.7.2009. While allowing the application, the Trial Court imposed cost of Rs. 2,500/- payable by the petitioner's Advocate to the respondent

herein on or before 22.7.2009.

2. This revision is filed questioning that part of the condition directing the Advocate of the petitioner in the Trial Court to pay cost of Rs. 2,500/- to

the respondent herein, on or before 22.7.2009.

3. Heard both sides.

4. The learned counsel for the respondent has submitted that the revision petition filed u/s 115 of the CPC is not maintainable since the petitioner has remedy of filing an appeal against the order impugned in this Civil Revision Petition. Further, it is stated that when the condition was not complied with, the order dated 9.7.2009 got merged ultimately with the order dated 23.7.2009 dismissing the application. Therefore, the petitioner has remedy of appeal against the order dated 23.7.2009 dismissing the appeal.

5. On the other hand, the learned counsel for the petitioner has submitted that the application was allowed in favour of the petitioner and the petitioner is aggrieved only over the cost being imposed, that too, on the Advocate.

6. I have considered the submissions made on either side.

7. Challenge in the Civil Revision Petition is against the order dated 9.7.2009 imposing the aforesaid condition and not challenging the order dated 23.7.2009 dismissing the interim application for not complying with the condition.

8. The petitioner is the defendant in O.S. No. 359 of 2004. The ex-parte decree was passed on 19.2.2009. He filed an application in I.A. No. 86 of 2009 in O.S. No. 359 of 2004 in time to set aside the ex-parte decree and the same was allowed on 9.7.2009 on condition that the counsel for the petitioner in the Trial Court was to pay Rs. 2,500/- as cost to the respondent herein. The cost was not paid. Since the condition was not complied with, I.A. No. 86 of 2009 in O.S. No. 359 of 2004 was dismissed on 23.7.2009.

9. Here, the petitioner has sought to question the order dated 9.7.2009 imposing cost, by allowing I.A. No. 86 of 2009, that too, on the Advocate of the petitioner in the Trial Court. It is admitted that no appeal would lie against the order dated 9.7.2009 imposing cost at the instance of the revision petitioner since the application was allowed.

10. As no appeal lies, this Civil Revision Petition is maintainable and therefore, I am inclined to reject the submissions made by the learned counsel for the respondent.

11. The petitioner herein has an option to question the order dated 23.7.2009 by filing appeal against the same but the same could not preclude him to question the order dated 9.7.2009 imposing cost on the Advocate. It is surprising that the Trial Court imposed cost on the Advocate. The

same is without jurisdiction. Accordingly, the condition imposed in the order dated 9.7.2009 imposing cost of Rs. 2,500/- on the Advocate of the petitioner in the Trial Court is set aside. The Civil Revision Petition is allowed. The connected Miscellaneous Petition is closed. No costs. As the suit is of the year 2004, the Trial Court is directed to dispose of the suit on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.