
(2010) 07 MAD CK 0174

In the Madras High Court

Case No : C.R.P. (NPD) . No's. 1166 and 1167 of 2008 and M.P. No. 1 of 2008

S. Jothilingam

APPELLANT

Vs

M. Rajkumar

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

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

Citation : (2010) 07 MAD CK 0174

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : C. Senthilkumar, for the Appellant; P. Sathish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Inveighing the order dated 5.3.2008 passed by the District Munsif, Arani, Thiruvannamalai in I.A. Nos. 621 & 622 of 2007 in O.S. Nos. 274 and 281 of 2004, these civil revision petitions are focused.

2. The facts in nutshell would run thus:

The respondent herein filed the suits O.S. Nos. 274 and 281 of 2004 as against one and the same defendant, who happened to be the revision petitioner herein, for recovery of money. The revision petitioner/defendant entered appearance in both the suits. Subsequently, he remained absent whereupon ex-parte decrees were also passed. Thereafter, I.A. Nos. 621 and 622 of 2007 were filed under Order 9 Rule 13 of C.P.C. to get the ex-parte decrees set aside and they were set aside subject to the condition that half of the decretal amount under each of the decrees shall be deposited by the revision petitioner/defendant.

3. Being aggrieved by and dissatisfied with the said orders these revisions have been filed by the defendant on the main ground that the condition imposed by the lower Court was onerous.

4. Heard both sides.

5. The point for consideration is as to whether the condition imposed by the lower Court is onerous or not?

6. The learned Counsel for the respondent/plaintiff would convincingly and correctly, appropriately and appositely point out that the revision petitioner/defendant was dilly-dallying and shilly-shallying with the matter and that alone made the Court to feel that if one other opportunity was given without any condition to the revision petitioner/defendant he would certainly drag on the proceedings ad infinitum and in order to instil some discipline in the litigative process, the lower Court imposed such condition, which may ex facie appear to be onerous but in the facts and circumstances of this case by no stretch of imagination it could be treated as onerous or oppressive.

7. Whereas the learned Counsel for the revision petitioner/defendant would submit that even before adjudicating the liability, the lower Court was not justified in imposing such onerous condition and the delay had occasioned due to the reason beyond the control of the defendant and as such leniency might be shown by this Court.

8. Considering the pro et contra I am of the view that in simple suit for recovery of money, where the parties are fighting the litigation at arms length it is better not to impose such condition to deposit huge amount. However, security could be directed to be furnished by the revision petitioner/defendant on finding that the defendant is dragging on the proceedings.

9. Hence, I am of the view that the order of the lower Court could be modified as under:

The revision petitioner/defendant shall furnish immovable property security for the suit amounts by the end of this month to the satisfaction of the lower Court. Whereupon the order dated 5.3.2008 passed by the District Munsif, Arani, Thiruvannamalai in I.A. Nos. 621 and 622 of 2007 in O.S. Nos. 274 and 281 of 2004 shall stand modified and if there is default in complying with the condition imposed in this order then the revisions petitions shall stand dismissed.

10. The learned Counsel for the respondent/plaintiff would make an extempore submission that the suits are money suits and already they are pretty old and hence, he prays and implores that a time frame be fixed for the disposal of the matter.

11. On complying with the condition imposed in this order, the lower Court shall see to it that the entire matter is disposed of within a period of two months. Both the parties shall co-operate with the Court for speedy disposal of the matter.