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Court : Chennai

Decided On : Jan-27-2017

Judge : M.V. Muralidaran

Appeal No. : CRP(NPD).No. 3661 of 2013

Appellant : Kathirvelu

Respondent : Sureshkumar

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 19.04.2013, returning the application filed by the petitioner in I.A.Sr.No.3603 of 2013 in I.A.No.526 of 2011 in O.S.No.233 of 2010 on the file of Subordinate Judge, Ranipet.)

1. The plaintiff is the revision petitioner before this Court, challenging the order dated 19.04.2013 on the file of Subordinate Judge, Ranipet.

2. Originally, the plaintiff filed a suit in O.S.No.233 of 2010 against the defendant directing the defendant to pay a sum of Rs.7,99,359/- for recovery of the amount and the same was dismissed for default on 15.11.2010 for non-appearance of the petitioner/plaintiff.

3. Due to the dismissal of the suit, the petitioner/plaintiff has filed an application under Order IX, Rule 9 of C.P.C, to restore the suit which was dismissed for

default on 15.11.2010 along with a condone delay petition seeking condonation of 44 days in filing the said application. The said application was numbered in I.A.No.526 of 2011 and notice was given to the respondent and on hearing both sides, the learned Subordinate Judge, Ranipet has allowed the application on 10.10.2012 on condition requiring the petitioner to pay a sum of Rs.250/- to the respondent on or before 18.10.2012, failing which such petition would be dismissed.

4. Due to non-payment of the said cost, the said application in I.A.No.527 of 2011 was dismissed. Therefore, this petitioner/plaintiff had filed another application in I.A.No.526 of 2011 in O.S.No.233 of 2010 under Section 148 of C.P.C to enlarge the payment of cost and the said application was restored by saying that the petition is maintainable. Challenging the said order, the petitioner has filed this civil revision Petition before this Court.

5. Heard M/s.A.Prabhakaran, learned counsel appearing for the petitioner and M/s.Sai Krishnan for M/s.Sai Bharath and Ilan, learned counsel appearing for the respondent and perused the materials available on record.

6. Admittedly, the trial Court has allowed the said application for condonation of delay in I.A.No526 of 2011 on condition that the petitioner shall pay costs of Rs.250/- on or before 18.10.2012. The said order was not complied with by the petitioner/plaintiff. Therefore, such application was automatically dismissed. The petitioner filed I.A.SR.No.3603 of 2013 in I.A.No.526 of 2011 for extension of time and the same is maintainable, in view of provision in Section 148 and 151 of C.P.C, but the learned Judge, without saying anything simply returned the application on the ground that how the petition is maintainable.

7. This Court and the Hon'ble Apex Court very categorically held that the Court can exercise its jurisdiction under section 148 of C.P.C for extension of time for payment of the costs. The learned Judge simply returned the petitioner which was under challenge before this Court.

8. Time and again, this Court and Hon'ble Apex Court categorically held that while the trial Court dealing with the applications, has to take judicial view on the

application. Admittedly, the application filed for extension of time is maintainable as per the provisions under Section 148 of C.P.C. The learned Judge ought to have allowed the application and proceeded the case but due to return of the said application, this Civil Revision Petition has been filed and the same is pending for three years unnecessarily.

9. Therefore, this Court ought has to direct the Subordinate Judge, to number the said application and pass orders, but, due to long pendency of this Civil Revision Petition for more than 3 years, in the interests of justice, this Court is inclined to allow the Civil Revision Petition and permit the petitioner to pay the cost but the cost amount is enhanced from Rs.250/- to Rs.1,500/-.

10. In the result,

(a) The Civil Revision Petition is allowed by setting aside the order dated 19.04.2013 made in I.A.Sr.No.3603 of 2013 in I.A.No.526 of 2011 in O.S.No.233 of 2010, on condition that the petitioner should pay a sum of Rs.1,500/- as costs to the respondent/defendant within a period of one week from the date of receipt of a copy of this order;

(b) The trial Court is directed to number the set aside application on producing the payment receipt and to dispose the same within a period of one month from the date of receipt of a copy of this order, by giving opportunity to both the parties;

(c) Thereafter, after passing order in the set aside petition, since suit is for the year of 2010, the learned trial Judge is directed to dispose of the suit in O.S.No.233 of 2010, within a period of one month on day today basis without giving any adjournment to either parties and both the parties are hereby directed to co-operate for early disposal of the suit within the time limit as fixed by this Court.

11. Accordingly, this Civil Revision Petition is allowed with cost.

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