

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR**

Present : Thiru. **T.V.Hemanandakumar, B.A.,L.L.M.,**
Additional District Judge, Virudhunagar

Wednesday, the 24th day of January, 2024

IA No.48/2022 in IA No.182/2021 in OS No. 85/2021(CF No.2/2022)

Muthuraman ... Petitioner/Respondent/Defendant

S.Ramar ... Respondent/Petitioner/Plaintiff

$$V_S$$

This petition came up on 10.01.2024 for final hearing before me in the presence of Thiru.S.S.Mahendran, Learned advocate for the Petitioner Thiru.D.Dhanachandra Prakash, Learned advocate for the Respondent and upon considering all material records in this case and hearing the arguments on both sides and having stood over till this day for consideration and this court doth deliver the following

ORDER

Petition filed under order 39 rule 4 of CPC to set aside the exparte order of injunction.

2. The averments in the petition are as follows:

The petitioner is the defendant in the suit. The case was posted on 30.03.2022 for filing written statement and counter in interim application. On that day the petitioner's counsel requested for some more time. His request was refused and IA.182/2021 was allowed. After receiving notice petitioner's counsel entered appearance on 25.01.2022. Copy of petition and plaint was served on 15.02.2022. So petitioner's counsel prayed for further time for filing counter. Thereafter, case was posted to 09.03.2022. On that date, case was referred to Lok Adalat to be held on

11.03.2022. That case was posted to 17.03.2022 and at request of petitioner's counsel adjourned to 30.03.2022. On 30.03.2022 the counter and written statement were ready. Due to the failure of petitioner to sign papers, petitioner's counsel requested the court for further time. But, the interim application was allowed for not filing counter. The petitioner was not given sufficient opportunity to present his case. Hence, the exparte order of injunction has to be set aside.

3. The respondent filed counter with following contentions:

The averment that IA.No.182/2021 was allowed without giving sufficient time is false. The averment that the mater was referred to Lok Adalat on 11.03.2022 alone is true. The petitioner ought to have filed counter on 09.03.2022. This court extended time to file counter on 17.03.2022 and 30.03.2022. The averment that the petitioner was unable to produce counter for non availability of signature is false. The affidavit does not disclose any compelling necessity to set aside the order passed in IA.No.182/2021. Sufficient opportunity was given to the petitioner before passing the order. This respondent has already filed IA.No.57/2022 against petitioner praying to punish him for breach of injunction order. Hence this petition has to be dismissed.

4. Point for consideration is whether this petition has to be allowed?

5. Heard both sides.

6. Point:

This petition is filed by the respondent in IA.182/2021 to set aside the exparte order of injunction passed on 30.03.2022. The respondent filed the suit for partition stating that suit properties were purchased by the petitioner and respondent. Along with the suit, respondent filed IA.182/2021 for an order of injunction restraining the petitioner herein from interfering with the peaceful possession of the respondent. On 30.03.2022 since the petitioner did not file counter that petition was allowed.

7. The learned counsel for the petitioner argued that this petitioner entered appearance in IA.182/2021 on 15.02.2022. On the next hearing 09.03.2022 case was referred to Lok Adalat. Settlement talk was going on and on 30.03.2022 the petitioner could not file the counter for want of signature, petitioner's counsel prayed time but

the court passed exparte order.

8. The respondent's counsel submitted that sufficient time was granted to the petitioner to file counter and he did not. After passing injunction order the petitioner violated the order and this respondent filed another petition for violating the order.

9. In this case the respondent has admitted that on 09.03.2022 the case was posted for settlement before Lok Adalat. Thereafter, case was posted on 11.03.2022, 17.03.2022 and on 30.03.2022 for filing counter. On 30.03.2022 exparte order of injunction was passed. Admittedly, the petitioner herein also is a co-owner. So, before passing the order of injunction sufficient opportunity can be given to the petitioner to file his objection. This petition is filed within time on 29.04.2022. So this court is of the view that petitioner can be permitted to contest the application by filing counter. For that purpose, the order in IA182/2021 dated 30.03.2022 has to be set aside.

10. In the result, petition is allowed. The order in IA.182/2021 dated 30.03.2022 is set aside. No order as to costs.

Dictated to the steno-typist, typed by him, corrected and pronounced by me in open court, on this the 24th day of January, 2024.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioner:

Nil.

Witness and Exhibits on the side of the Respondent:

Nil.

Additional District Judge,
Virudhunagar.

Additional District Court
Virudhunagar
IA No.48/2022 in IA No.182/2021_
in OS No.85/2021
ORDER
Dated: 24.01.2024
