



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 7/1/2015

C O R A M

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THE HONOURABLE Ms.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) Nos.2417 and 2418 of 2014

A. Sukumaran ... Petitioner in both
the petitions

Vs

A. Prince ... Respondent in both
the petitions

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17/9/2014 made in I.A.Nos.355 and 356 of 2014 in O.S.No.121 of 2014 on the file of the Principal Sub-Judge, Nagercoil.

For petitioner ... Mr.H.Thayumanaswamy
For respondent ... Mr.S.Rajasekar

C O M M O N O R D E R

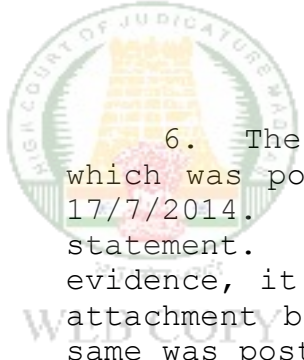
There are two revisions filed by the defendant against the ex parte orders passed in I.A.No.185 of 2014 in O.S.No.121 of 2014 on the file of the Sub-Court, Nagercoil.

2. The suit is filed by the plaintiff for recovery of Rs.1,14,375/-, based on a promissory note. Pending suit, the plaintiff had filed I.A.No.185 of 2014 by directing the defendant to furnish security or for attachment before the judgment of the suit schedule property.

3. The defendant had filed his written statement as well as the counter statement in I.A.No.185 of 2014. However, the defendant was set ex parte on 17/7/2014 as he did not appear before the Court. Therefore, the defendant was set ex parte in both the applications as well as in the suit which were sought to be set aside by the defendant in I.A.Nos.355 and 356 of 2014.

4. The trial Court viz., the Principal Sub-Judge, Nagercoil, while allowing the applications imposed an onerous condition directing the defendant to deposit 50% of the suit amount on or before 6/10/2014. Aggrieved by the said order, the above Civil Revision Petitions are preferred.

5. Heard the learned counsel for the petitioner and the learned
<https://hcservices.ecourts.gov.in/hcservices/>
counsel for the defendant.



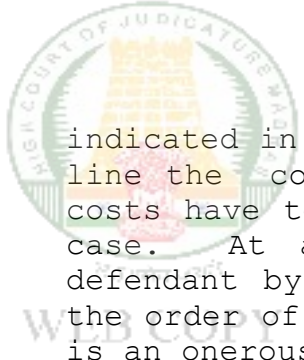
6. The suit is one for recovery of money based on a promissory note which was posted for filing of the written statement of the defendant on 17/7/2014. On the said date, the defendant had not filed his written statement. Hence he was called ex parte and for recording of ex parte evidence, it was posted on 7/8/2014. On the same day, the application for attachment before the judgment was filed in I.A.No.185 of 2014 and the same was posted on 17/7/2014 for filing counter.

7. As no counter was filed on the above said date, it was called in open Court and an ex parte order was passed against the defendant/petitioner herein attaching the suit property before judgment. It was contended by the defendant that he was suffering from Rheumatic problem in both left leg and left hand and he was immobilized on the relevant date. After taking medical treatment, his health condition improved and contacted the counsel, who informed him that he was set ex parte in both the suit as well as in the application on 17/7/2014. The petitioner attributed the reason only for his ill health and hence submitted that the absence was neither willful nor wanton.

8. Besides, the petitioner also would contend that he has an excellent case on merits as he had not borrowed any amount from the plaintiff on 20/5/2011 and executed the alleged promissory note. Though the plaintiff challenged the said application, denying all the averments, the Sub-Judge, Nagercoil after elaborate consideration, allowed the same. However, an onerous condition that 50% of the suit claim has to be deposited to the credit of the suit was imposed. The said condition is challenged now by the defendant as such onerous conditions cannot be imposed and as such the same is unsustainable.

9. It is contended by the counsel for the petitioner/defendant that under Order 9 Rule 7 of the Code of Civil Procedure, the Court gone upon such terms as it directs as to costs or otherwise allow the absentee defendant to be heard in answer to the suit as if he had appeared on the day fixed for his appearance. The power of the Court to impose the costs and put the defendant/applicant on terms is culled out from the explanation 'upon such terms as the Court directs as to costs or otherwise'. On an adjourned date, in spite of the Court having proceeded ex parte earlier, the defendant is entitled to appear and participate in the subsequent proceedings as of right. Order 9 Rule 7 of the Code enables the defendant, who wishes to proceed with the suit from a stage where the defendant became ex parte. While allowing the application under Order 9 Rule 7 of the Code, the Court cannot impose a condition onerous by placing the defendant in a situation worse of than what he would have been if he had not filed the application under Order 9 Rule 7 of the Code. The condition imposed by the trial Judge should not be such as would have the effect of decreeing the suit itself.

10. Similarly, under the guise of exercising power of placing upon terms 'make order which perhaps the Court would not have made in the suit itself'. It is the duty of the Court to ensure the orderly conduct of the proceedings by imposing a penalty for the dilatory tactics that may be adopted by the defendant to prolong the litigation. The costs implied in the application under Order 9 Rule 7 of the Code is only to compensate the plaintiff for the loss of time and inconvenience caused by the defendant. The costs and the terms



indicated in Rule 7 of the Code are only the tools for the Court to streamline the conduct of the trial within the time fixed. How such terms or costs have to be fixed may depend upon the facts and circumstances of the case. At any costs, the condition imposed should not prejudice the defendant by directly involving the controversy in the suit. Therefore, the order of the Sub-Judge though has allowed the application on terms, it is an onerous condition which cannot be allowed to stand.

11. In the result, these Civil Revision Petitions are allowed. The order of the Principal Sub-Judge, Nagercoil is set aside as the same suffers from infirmity of vagueness and want of clarity in so far as it imposes the onerous condition to deposit 50% of the suit claim. In all the other respects, the order of the Principal Sub-Judge, Nagercoil is confirmed i.e., allowing the applications. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The Principal Sub-Judge, Nagercoil.

TS/18.03.2015/3P-2C

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