

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1986 of 2016

R.Pragash

.. Appellant/Defendant

-VS-

B.Natarajan

.. Respondent/Plaintiff

Memorandum of Grounds of Civil Miscellaneous Appeal under Order 43, Rule 1 of the Civil Procedure Code, against the order and decretal order dated 02.03.2016 made in I.A.No.350 of 2015 in O.S.No.17 of 2015 on the file of the learned Principal District Judge, Krishnagiri.

For Appellant :: Mr.V.Nicholas

JUDGMENT

The defendant in the suit is the appellant herein. Since he was proceeded ex parte on 1.10.2015, he had filed an application under Order 9, Rule 13 read with Section 151 of the Civil Procedure Code to set aside the ex parte decree dated 1.10.2015 passed against him. The learned trial Judge, after noting the admitted statement of the appellant/defendant that he received a sum of Rs.5,00,000/- from the respondent/plaintiff, as a condition precedent, directed the appellant/defendant to deposit only the admitted amount of Rs.5,00,000/- on or before 1.3.2016, to restore the suit by setting aside the ex parte decree dated 1.10.2015. Since the appellant/defendant failed to comply with the said conditional order, his application was dismissed by the impugned order dated 2.3.2016 passed in I.A.No.350 of 2015 in O.S.No.17 of 2015. Aggrieved by the same, he is before this Court.

2. The sole contention made by the learned counsel for the appellant before this Court to assail the impugned order shows that the appellant/defendant issued three blank cheques bearing Nos.576828, 576829 and 576830 to repay a sum of Rs.3,00,000/- and again issued four cheques on 9.10.2013 bearing Nos.582207, 582208, 582209 and 582210 to repay another part-payment of Rs.2,00,000/-. But it is not his submission that any one of the aforementioned cheques issued by the appellant/defendant was realised. Therefore, the learned trial Judge, having taken note of the admitted statement of the appellant/defendant that he borrowed a sum of Rs.5,00,000/- and upon his failure to deposit that amount as a condition precedent to restore

the suit, has dismissed his application to set aside the ex parte decree dated 1.10.2015. Hence, the impugned order, in my considered opinion, cannot be found fault with. Secondly, when the appellant/defendant has not been able to establish even before this Court with regard to any part payment made by him, this Court is not inclined to entertain the appeal. Accordingly, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.14344 of 2106 is also dismissed.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

ss

To

1. The Principal District Judge
Krishnagiri

copy to;

THE SECTION OFFICER

VR SECTION, HIGH COURT MADRAS

+1 CC TO M/S.NICHOLAS Advocate SR.NO. 55823

C.M.A.No.1986 of 2016

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RD : 19/10/2016

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