

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2016

Coram

The Hon'ble Mr.Justice M.DURAIWAMY

CRP(NPD)No.1228 of 2015
and M.P.No.1 of 2015

Sarala Bastin

... Petitioner / Defendant

vs

T.V.Hariharan

... Respondent / Plaintiff

Civil Revision Petition No.1228 of 2015 filed under Section 115 of the Civil Procedure Code against the order passed in I.A.No.15449 of 2013 in O.S.No.5297 of 2012, dated 09.10.2014 on the file of II Assistant City Civil Judge, Chennai.

For Petitioner : Ms.V.Yamunadevi

For Respondent : Mr.J.Kamaraj

O R D E R

Challenging the fair and decreetal order dated 09.10.2014 passed in I.A.No.15449 of 2013 in O.S.No.5297 of 2012 on the file of the II Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2. The respondent / plaintiff filed a suit in O.S.No.5297 of 2012 for recovery of sum of Rs.1,00,468.15 together with interest at the rate of Rs.12% per annum. The suit was filed under Order 37 of the Civil Procedure Code. Since the petitioner/defendant failed to appear before the Trial Court, she was set exparte and an exparte decree was passed on 29.11.2012. Thereafter, the petitioner/defendant filed an application in I.A.No.15449 of 2013 to set aside the exparte decree dated 29.11.2012. In the affidavit filed in support of the petition, in paragraph No.3, the petitioner/defendant has stated that on 17.08.2012, while she was cooking, oil pan fell on her legs and she sustained severe burn injuries in both her legs. Further, she has stated that because of the burn injuries, she was bed ridden for more than four months and hence, she could not attend the court on the date of hearing. The application filed by the petitioner/ defendant before the trial Court was contested by the respondent/plaintiff. In the counter, the respondent/plaintiff has stated that the reasoning given by the petitioner/defendant for setting aside the exparte decree cannot be accepted. The Trial Court, taking into consideration the case of both parties, dismissed the application finding that the reasoning for non appearance of the defendant was not properly explained by her. Against this order, the petitioner/defendant has filed the above Civil Revision Petition.

3. When the matter is taken up for hearing today, the learned Counsel appearing for the revision petitioner/defendant has produced a photograph and the medical certificate dated 22.08.2012, issued by the Government Doctor. The photograph produced by her would establish that the defendant had suffered burn injuries in both her legs.

4. Heard Ms.V.Yamunadevi, learned counsel for the petitioner Mr.J.Kamaraj, learned counsel for the respondent and perused the materials available on record.

5. The present application to set aside the exparte decree has been filed under Order 37 Rule 4 of the Code of Civil Procedure. As per Order 37 Rule 4 of CPC, under special circumstances, the exparte decree passed by the trial court can be set aside. In the case on hand, the special circumstances seeking for setting aside the exparte decree was that the defendant suffered burn injuries and was taking treatment for the same for four months. When the defendant had burnt both her legs, one cannot expect her to walk and appear before the trial Court for filing an application to leave to defend. In these circumstances, in the interest of justice, the trial Court should have set aside the exparte decree and given

an opportunity to the defendant to file an appropriate application for obtaining leave to defend.

6. In the said circumstances, I am of the considered view that in the interest of justice, the fair and decreetal order dated 09.10.2014 passed in I.A.No.15449 of 2013 in O.S.No.5297 of 2012 are liable to be set aside and accordingly, the same are set aside on condition that the petitioner / defendant should pay a sum of Rs.2,000/- as cost to the respondent / plaintiff within 3 days from the date of receipt of copy of this order.

7. The learned counsel appearing for the petitioner had paid the said sum of Rs.2,000/- in the open Court itself to the learned counsel appearing for the respondent. The learned counsel for the respondent also acknowledged the receipt of the cost amount of Rs.2,000/-.

8. In these circumstances, the application in I.A.No.15449 of 2013 stands allowed and the exparte decree in O.S.No.5297 of 2012 stands set aside. The petitioner / defendant is permitted to file an application seeking leave to defend the suit within one week from the date of receipt of copy of this order. On filing such application, the respondent / plaintiff shall file his counter within two weeks. Thereafter, the II Assistant Judge, City Civil

Court, Chennai, is directed to dispose of the leave to defend the application to be filed by the petitioner/defendant within three weeks from the date of filing of the counter by the respondent / plaintiff.

With these observations, this Civil Revision petition is allowed.
Connected Miscellaneous Petition is closed.

26.09.2016

pvs

Note: Issue on 28.09.2016

To
The II Assistant Judge, City Civil Court,
Chennai.

M.DURAIWAMY,J

pvs

CRP(NPD)No.1228 of 2015
and M.P.No.1 of 2015

26.09.2016