

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.672 of 2014
and M.P.No.1 of 2014

Vatchalla Venkataramana

... Petitioner

vs

D.R. Finance Corporation,
represented by its Chairman D. Rajappa,
No.45, Station Road,
Villivakkam,
Chennai – 600 049

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree passed in I.A.No.14642 of 2013 in O.S.No.3414 of 2012 dated 24.01.2014 on the file of 18th Assistant City Civil Judge, Chennai.

For petitioner : Mr.S. Senthil Nathan
For respondent : Mr.R. Anand Kumar

ORDER

Challenging the fair and final order passed in I.A.No.14642 of 2013 in O.S.No.3414 of 2012 on the file of 18th 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.3414 of 2012 for recovery of money under Order 37 Rule 1 of Civil Procedure Code. Since the defendant failed to appear before the trial Court, she was set ex-parte and an ex-parte decree was passed on 04.01.2013. Pursuant to the decree passed in the suit in O.S.No.3414 of 2012, the respondent/plaintiff has filed an Execution Petition in E.P.No.1336 of 2013. The defendant also remained absent before the Executing Court. Subsequently, the defendant filed an application in I.A.No.14642 of 2013 under Order 37 Rule 4 of Civil Procedure Code to set aside the ex-parte decree passed in the suit in O.S.No.3414 of 2012 on 04.01.2013.

3. In the affidavit, filed in support of the petition, in paragraph-2, the defendant has stated that she came to know about

the fraudulent service of summons in the suit by forging the signature of her husband in the acknowledgment card in Tamil, whereas, the fact remains is that her husband is not capable of writing his name in Tamil. Further, she has stated that she came to know about the ex-parte decree passed in the suit only during the pendency of the execution proceedings. The defendant has also stated that the plaintiff filed a suit in O.S.No.6172 of 2006 based only on the Pronote, executed by her, which was also dismissed by the trial Court. The application, filed by the defendant, was contested by the plaintiff.

4. The trial Court, taking into consideration the case of both parties, dismissed the petition, finding that the defendant has not explained the reasons for not filing the application in time.

5. The learned counsel, appearing for the petitioner, submitted that based on the Notice issued to the defendant, which was alleged to have been signed by her husband, the trial Court ordered paper publication and set the defendant ex-parte and an ex-parte decree was passed on 04.01.2013. The learned counsel further submitted that the defendant's husband has not signed the

acknowledgment card and that, her husband used to sign his name only in English and that he does not know to write his name in Tamil.

6. On a perusal of the suit pronote, which has been annexed in the typed set of papers, it is clear that the defendant's husband has signed the pronote only in English. The learned counsel for the petitioner also produced the certified copy of the vakalat, filed in the suit in O.S.No.6172 of 2006 on the file of XI Assistant Judge, City Civil Court, Chennai, wherein also, the defendant's husband signed his name in English. That apart, in the Suit Pronote, the address of the defendant has been mentioned as No.20, Bharathi Nagar, 1sts Street, Villivakkam, Chennai-49, whereas, the suit summons was sent to the defendant at 20-A, Sathya Nagar, Villivakkam, Chennai-49.

7. The learned counsel, appearing for the petitioner, submitted that the respondent/plaintiff had wantonly mentioned the wrong address and obtained the ex-parte decree fraudulently. When the address of the petitioner/defendant has been mentioned as No.20, Bharathi Nagar, 1sts Street, Villivakkam, Chennai-49 in the pronote, the necessity for sending the notice to some other address was not properly explained by the respondent/plaintiff. In these

circumstances, I find merits in the case put forth by the defendant before this Court. In these circumstances, in the interest of justice, the defendant should be given an opportunity to contest the suit on merits. Accordingly, the judgment and decree passed in the suit in O.S.No..3414 of 2012 dated 04.01.2013 are set aside. The defendant is directed to file an application for leave to defend the suit as per the provisions of the Civil Procedure Code and the trial Court is directed to decide the said application as expeditiously as possible. In the case of application, to be filed by the defendant, seeking leave to defend the suit, is being allowed by the trial Court, the trial Court is directed to dispose of the suit in O.S.No.3414 of 2012, on merits and in accordance with law within six months from the date of passing the order in the application for leave to defend the suit. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed.

03-11-2016

sr

Index:no

website:yes

To

The 18th Assistant Judge, City Civil Court, Chennai

M. DURAISWAMY,J.,

sr

CRP(NPD)No.672 of 2014

03-11-2016

<http://www.judis.nic.in>