

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**C.R.P(NPD)No.533 of 2011
and
M.P.No.1 of 2011**

V.Dhandapani

.. Petitioner

Vs.

K.Arukkani

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Final order passed in I.A.No.1147 of 2010 in I.A.No.121 of 2010 in O.S.No.16 of 2009, on the file of the District Munsif Court, Udumalpet dated 19.11.2010.

For Petitioner : Mr.S.Arjun
for Mr.M.Parthasarathy

For Respondent : Mr.S.Gunalan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and final order passed in I.A.No.1147 of 2010 in I.A.No.121 of 2010 in O.S.No.16 of 2009 on the file of the District Munsif Court, Udumalpet dated 19.11.2010.

2.The revision petitioner before this Court is the defendant in O.S.No.16 of 2009 on the file of the District Munsif Court, Udumalpet. The said suit is filed for recovery of money on the basis of promissory note. By resisting the said suit the revision petitioner filed written statement and denied the execution of pro-note by him to the respondent herein/plaintiff. The above suit was posted for trial on 26.07.2009 and on that date the petitioner was fell ill and he was admitted into hospital, hence he was not in a position to neither appear before the trial Court nor give instruction to his advocate. Therefore an ex-parte decree was passed against the petitioner on 26.05.2009.

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3.Thereupon the revision petitioner filed an application to set aside the ex-parte decree passed against him in I.A.No.121 of 2010 on 03.12.2009. The respondent herein resisted the said application by filing counter affidavit.

Considering the case of the parties, the trial Court was pleased to allow I.A.No.121 of 2010 on condition to pay a sum of Rs.300/- to the respondent herein on or before 15.07.2010. However, the petitioner has not paid the cost of Rs.300/- and therefore I.A.No.121 of 2010 was dismissed by the Court below on 16.07.2010. Thereafter the revision petitioner took out an application in I.A.No.1147 of 2010 in I.A.No.121 of 2010 under Section 151 of C.P.C. to set aside the order dated 16.07.2010 with a direction to the respondent to receive the cost.

4.The respondent herein filed counter affidavit to the said I.A.No.1147 of 2010 and opposed to allow the same. After considering the rival submission of the parties the trial Court by order dated 19.11.2010 dismissed the above application in I.A.No.1147 of 2010. Challenging the same the revision petitioner is before this Court.

5.I heard Mr.S.Arjun for Mr.M.Parthasarathy, learned counsel appearing for the petitioner and Mr.S.Gunalan, learned counsel appearing for the respondent and the entire records are perused.

6.On perusal of the records, it is seen that suit for recovery of money was filled by the respondent herein against the revision petitioner. The said

suit was decreed and an ex-parte decree came to be passed on 26.09.2011. According to the revision petitioner on 26.11.2009 when the suit was posted for trial, he was not doing well and therefore he was not in a position to appear before the Court. Consequent to the same an ex-parte decree was passed against him on 26.11.2009. In order to set aside the ex-parte decree, the revision petitioner filed application in I.A.No.121 of 2010 immediately thereafter within a week. The said application was allowed by the trial Court with an condition to pay cost of Rs.300/- to the respondent herein on or before 15.07.2010 and the case was posted for compliance on 16.07.2010. It seems from the records that the revision petitioner did not paid cost within the time stipulated by the trial Court. Hence the revision petitioner filed an application in I.A.No.1147 of 2010 to set aside the order made in I.A.No.121 of 2010 dated 16.07.2010.

7.The reason assigned by the revision petitioner for non-payment of cost within a stipulated period is that he was not well and therefore he could not contact his advocate to pay the cost, since the revision petitioner suffered from illness, he could not make payment of cost to the respondent in time. In the affidavit, the revision petitioner stated that he is ready to pay the cost.

8. On the other hand, the respondent herein contended that the present application filed under Section 151 of C.P.C. to set aside the order made in I.A.No.121 of 2010 is not maintainable in law. The revision petitioner ought to have filed application under Section 148 of C.P.C. seeking extension of time to pay the cost, whereas in the present case the revision petitioner filed application to set aside the order as if it is an ex-parte order. The revision petitioner ought to have filed appeal as against the order of dismissal made in I.A.No.1147 of 2010.

9. I have carefully considered the rival submission on either side. It is an admitted fact that the revision petitioner was directed to pay cost of Rs.300/- to the respondent herein to set aside the ex-parte decree passed against the revision petitioner. But he failed to pay cost in time due to his ill health. However, he filed application immediately within 4 days from the date of dismissal order made in I.A.No.121 of 2010. It is true that the revision petitioner filed application to set aside the order dated 16.07.2010 made in I.A.No.121 of 2010, instead of seeking for extension of time as contemplated under Section 148 of C.P.C. The technicalities should not stand in the way of venturing substantial justice to the parties. The duty of this Court is to administer justice and in such process rigorous of procedural law will have to be loosened and substantial justice should be administered. The

procedure of procedural law is meant to facilitate administration of real justice and not to defeat the same. The Hon'ble Division Bench of this Court has considered the above said principle of law in a judgment reported in **2006 (3) CTC 418** in the matter of **Govindammal v. Murugan & others**.

10. In the light of the principles of law laid down in the above judgment, this Court is of the considered view that the order of the trial Court made in I.A.No.1147 of 2010 dated 19.11.2010 is liable to be set aside. The Court must always mould the relief for rendering substantial justice to the parties and shall not follow too technicalities.

11. In the view of the above discussion I am of the opinion that this C.R.P is liable to be allowed and accordingly allowed.

12. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.1147 of 2010 in I.A.No.121 of 2010 in O.S.No.16 of 2009, dated 19.11.2010, on the file of the learned District Munsif Court, Udumalpet;

(b) the trial Court is directed to take up the suit on day

to day basis without giving any adjournments to either parties and dispose the same within a period of three months from the date of receipt of a copy of this order. Both the petitioner and respondent are directed to co-operate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2016

vs

Note: Issue order copy on 19.09.2017
Index: Yes/No.
Internet: Yes/No.

To

The District Munsif Court,
Udumalpet.



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M.V.MURALIDARAN,J.

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