

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.851 of 2014
and M.P.No.1 of 2014

N.T.Ramachandran

.. Petitioner/Defendant

Vs.

Bharath Kumar Singvi

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 05.08.2013 made in I.A.No.1837 of 2013 in O.S.No.8510 of 2009 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioner : Ms.R.Poornima
For Respondent : Mr.N.Nagusah

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 05.08.2013 made in I.A.No.1837 of 2013 in O.S.No.8510 of 2009 on the file of the VIII Assistant City Civil Court, Chennai.

2.Learned counsel for the petitioner would submit that the respondent as a plaintiff filed a suit for recovery of money due on promissory note. The suit was posted for examination of witnesses on 09.07.2010 and for cross-examination, it was posted on 13.07.2010, on which date, no one represented on behalf of the defendant/petitioner herein, no cross-examination has been done and therefore, exparte decree was passed. Aggrieved over the same, the petitioner has filed an application to condone the delay of 874 days in filing the petition to set aside the exparte decree dated 13.07.2010 stating that he met with an accident and he was in hospital as inpatient from 05.04.2010 to 24.01.2012. So he could not able to contact his counsel and he has failed to produce any hospital bills. But that factum was not considered by the trial Court. Therefore, he prays for setting aside the impugned order passed by the trial Court.

3.Learned counsel for the respondent would submit that the petitioner only with a view to drag on the proceedings, has filed the petition with the delay of 874 days in filing the petition to set aside the exparte decree. Further, the reason assigned by the petitioner is

not sufficient to condone the delay. He would further submit that the petitioner has raised a plea, which is not supported by consideration. If the petitioner is ready to deposit the decree amount to show his bonafide, he has no objection to condone the delay. However, he prays for dismissal of the petition.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The respondent as a plaintiff filed a suit for recovery of money due on promissory note. The petitioner/defendant filed the written statement stating that the promissory note is not supported by consideration and discharge. After framing of issues, the matter was posted for trial and when P.W.1's chief-examination was over, the matter was posted for cross-examination on 13.07.2010 and on that day, there was no representation on behalf of the defendant/petitioner and that he was set exparte. But the petitioner has not filed any petition to set aside the exparte decree immediately. He has filed an application for condonation of delay of 874 days in filing the petition to set aside the exparte decree.

6.On considering the defence raised by the petitioner, there is

no evidence to show that he was suffering from ailment and the medical bills filed before this Court were not marked, while he was in witness box. Further, the petitioner was not examined before the trial Court and he has not assigned any specific reason in the petition for the inordinate delay. Moreover, the petitioner has filed so many medical bills, but no reliance can be placed on them. It is well settled dictum of the Apex Court that unless the author of the document is examined before the Court, the said document cannot be relied upon. Even the custodian of the document was also not get into the witness box and the document was not marked before the trial Court. Under such circumstances, those documents cannot be looked into for the purpose of revision.

7. At this juncture, the learned counsel for the respondent would submit that if the petitioner shall deposit 50% of the decree amount, he has no objection to condone the delay.

8. In view of the submission made by the learned counsel for the respondent, I am inclined to allow this revision petition on deposit of portion of decree amount by setting aside the impugned order passed by the trial Court, which will meet out the ends of the

justice.

9.In fine, the Civil Revision Petition stands allowed subject to the condition that the petitioner shall deposit 50% of the decree amount i.e., Rs.74,000/- (Rupees Seventy Four thousand only) into the credit of O.S.No.8510 of 2009 on the file of the VIII Assistant City Civil Court, Chennai, on or before 03.01.2017, failing which, the Civil Revision Petition shall stand dismissed.

Call the matter on **04.01.2017** for reporting compliance.

08.12.2016

kj

Index:Yes/No

To

1.VIII Assistant City Civil Court, Chennai.

2.The Record Keeper
V.R.Section, High Court, Chennai.

R.MALA,J.

kj

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