

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (NPD)No.1552 of 2010

and

M.P.No.1 of 2010

C.Arumugam

.. Petitioner

Vs

Ashok Kumar

.. Respondent

Prayer:Civil Revision Petition filed under Article 115 of the Code of Civil Procedure, against the Fair and Decreetal Order dated 23.11.2009 made in I.A.No.1565 of 2008 in O.S.No.400 of 2004 on the file of the District Munsif, Palladam.

For Petitioner : Mr.T.M.Hariharan

For Respondent : Mr.S.Arjun
for M/s.P.Indumathi

ORDER

The Civil Revision Petition is filed against the Fair and Decreetal Order dated 23.11.2009 made in I.A.No.1565 of 2008 in O.S.No.400 of 2004 on the file of the District Munsif, Palladam.

2.The petitioner/defendant filed a suit in O.S.400 of 2004 before the District Munsif Court, Palladam, where an ex-parte order was passed against the petitioner/defendant on 23.11.2009. The petitioner moved I.A.No.1565 of 2008 to condone the delay of 354 days in filing the petition to set aside the ex-parte order, wherein the same was dismissed by the Court below by order dated 23.11.2009. Against the same present revision has been filed.

3.It is admitted fact that the suit filed for recovery of amount based on the alleged promissory note dated 23.10.2002, the said promissory note disputed by this petitioner / defendant, which has to be examined and proved only in trial by giving fair opportunity to this petitioner / defendant.

4.The case of the petitioner / defendant is that he was not executed the alleged promissory note in favour of the respondent / plaintiff and after filing the above said suit, the petitioner / defendant is entered appearance through his counsel, but the allegations that the respondent / plaintiff entered into oral promise to this petitioner / defendant, on this request of the petitioner / defendant, he would not pressed the suit and hence, the petitioner / defendant made to believe

that the respondent / plaintiff has not pressed the suit, but due to his railway employment, who was not able to inform the counsel to the stand of the plaintiff, whether he has not pressed the suit. On that score only he has not filed the written statement in the suit. Due to non filing of the written statement of the suit, this petitioner / defendant was set exparte and the exparte decree was passed on 24.03.2005.

5.It is also the case of the petitioner / defendant is that when he received a notice in the Execution proceedings then only he came to know about that the plaintiff had played fraud against the petitioner / defendant. Therefore, he filed a petition for setting aside the exparte decree along with the condone delay petition of 354 days. Therefore, he prays to condone the delay of 354 days.

6.The case of the respondent / plaintiff is that without any evidence, the petitioner / defendant has gave statement that this respondent / defendant has given undertaking to the petitioner / defendant for not pressing the suit. But also he stated that there is no evidence for that also. He has also come forward by saying that without he filed the application to set aside the exparte decree dated

24.03.2005 along with the delay petition in I.A.No.1565 of 2008 to condone the delay of 354 days. The petitioner / defendant not to have give valid reasons for the huge delay almost for one year. This Court and the Hon'ble Apex Court categorically held that the litigant in condoning petition has to give reason for each and every day for the causing of delay. But, the case in hand, he has not given any reason at all. Therefore, accepting the decision of the trial Court, dismissing the application in I.A.No.1565 of 2008 dated 23.11.2009. Therefore, he prays this Court to dismiss the above Civil Revision Petition.

7.Heard Mr.T.M.Hariharan, learned counsel appearing for the petitioner and Mr.S.Arjun for M/s.P.Indumathi, learned counsel appearing for the respondent.

8.Considering the both side arguments and on perusal of the records, I came to know that the pronote was dated 22.03.2002 and the exparte decree was also passed on 24.03.2005. The said decree was enclosed in the typed set of papers and on fair reading of the above, I came to know that the Court below has passed the decree with non speaking order. Merely due to non appearance of the defendant in the suit, the trial Court should not pass non speaking

order, but the Court must have gone through the facts and circumstances of the case of the either parties while deciding the suit, the speaking orders should be passed. Time and again, this Court and the Hon'ble Apex Court very categorically held that the Court below should pass the orders on merits by giving speaking order in all the cases either it is contested or ex parte proceedings. The case in hand, though it was ex parte decree, but it is only a non speaking order.

9. Apart from this, it is a suit for recovery of money based on the alleged pronote dated 22.03.2002 and on fair opportunity should be given to the executant of the said alleged pronote namely the defendant, for proving the execution of the pronote. Therefore, only on the interest of justice, I am inclined to set aside the judgment and decree in I.A.No.1565 of 2008 in O.S.No.400 of 2004 dated 23.11.2009 on the file of the District Munsif, Palladam, on condition to pay sum cost to the respondent / defendant.

10. Accordingly, I am inclined to pass the following orders:

(a) The civil revision petition is allowed by setting aside the order in I.A.No.1565 of 2008 in O.S.No.400 of 2004, on the file of the District Munsif, Palladam, dated 23.11.2009 on condition that the

petitioner / defendant shall pay a sum of Rs.1,000/- to the respondent / defendant within a period of two weeks from the date of receipt of a copy of this order;

(b)The District Munsif, Palladam is hereby directed to dispose of the set aside application filed by the petitioner / defendant within a period of four weeks from the date of receipt of a copy of this order and if the learned District Munsif, Palladam is come to a conclusion that the set aside application is allowed, then

(c)The learned District Munsif, Palladam is hereby directed to dispose of the suit within a period of six weeks from the date of the order in setting aside the application on a day to day basis, since the suit is of the year 2004 and both parties hereby directed to cooperate for the early disposal of the suit without seeking any adjournments.

11.In the result, the civil revision petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2016

vs

Index: Yes.
Internet: Yes.

To

The District Munsif Court,
Palladam.

M.V.MURALIDARAN.J.,

VS

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