

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.12.2016

Coram

The Hon'ble Mr. Justice **S.M.SUBRAMANIAM**

C.R.P.(PD) No.1200 of 2013 &
M.P.No.1 of 2013

Rajagopal

.. Petitioner

Vs

Dakshinamoorthy

.. Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the learned Subordinate Judge, Madurantakam, made in I.A.No.34 of 2012 in O.S.No.90 of 2008 dated 24.09.2012.

For petitioner .. Mr.M.R.Thangavel

For Respondent .. Mr.M.S.Subramaniam

ORDER

The present Civil Revision Petition has been filed challenging the order passed in I.A.No.34 of 2012 in O.S.No.90 of 2008 dated 24.09.2012, by the learned Subordinate Judge, Madurantakam.

2.The petitioner is the plaintiff in the Suit filed in O.S.No. 90 of 2008, seeking recovery of money, based on the demand promissory note executed by the respondent/defendant on 17.05.2006 for a sum of Rupees three lakhs.

3.The learned counsel for the petitioner/plaintiff contended that the respondent/defendant had not filed the written statement in time and the petitioner/plaintiff filed I.A.No. 329 of 2008, for attachment of the property, which was already ordered and the same is in force. Subsequently on 29.07.2009, an exparte decree was passed and on 17.08.2010, an Execution Petition was filed and the same was set exparte on 27.09.2010. All of a sudden, the respondent/defendant filed I.A.No.34 of 2011 in O.S.No.90 of 2008, for condoning the delay on 302 days in filing the Application under Order 9, Rule 13 CPC on 05.08.2011.

4.The petitioner/plaintiff contended that even at that point of time, no written statement was filed and the trial Court has erroneously allowed the Interlocutory Application, without considering the fact that the respondent/defendant was not prudent either in filing the written statement or in proceeding with the Suit. That apart, the respondent/defendant wantonly allowed the Court to pass an exparte order and waited for more than two years and filed the Interlocutory Application to set aside the exparte order, which cannot be encouraged by this Court.

5.The learned counsel for the respondent/defendant opposed the Petition by contending that the Suit is for recovery of money and in fact the written statement was already filed and a copy was served on the petitioner/plaintiff. That apart, an order of attachment passed against respondent/defendant is still in force. Such being the case, the defendant is entitled for an opportunity to adjudicate the Suit on merits and in accordance with law.

6.This Court accept the contentions of the learned counsel for the petitioner, solely on the ground that no Suit should be dismissed on technical grounds and the Suits are to adjudicated on merits and in accordance with law, by giving reasonable opportunity to the

respective parties. Such being the basic principles, this Court is inclined to consider the grounds raised by the respondent/defendant in the Revision Petition. Simultaneously, the fact remains that the respondent has not shown any interest to file the written statement in time and allowed the Subordinate Court to pass an *ex parte* decree, which also has to be deprecated. The conduct of the parties are important in conducting the Suit and in this case, the respondent/defendant was not prudent enough to pursue the Suit. Therefore, this Court though not inclined to consider the grounds raised in the Revision Petition, is inclined to direct the trial Court to dispose of the Suit, as expeditiously as possible, in view of the fact that the Suit is of the year 2008.

7. Accordingly, Civil Revision Petition is dismissed and the learned Subordinate Judge, Madurantakam, is directed to take up the Interlocutory Application for setting aside the *ex parte* decree and pass orders, by giving opportunity to the respective parties, within a period of four weeks from the date of receipt of a copy of this order and thereafter, the Suit shall also be taken up for disposal and the same shall be disposed of as early as possible, preferably within a period of three months. The learned counsel appearing both for the petitioner and respondent agreed that their respective parties will

co-operate for the adjudication of the Suit effectively and they will not seek unnecessary adjournments before the Subordinate Court. No costs. Consequently, connected Miscellaneous Petition is closed.

09.12.2016

rpa

Note: Issue Order copy on 15.12.2016
To

The learned Subordinate Judge,
Madurantakam.

S.M.SUBRAMANIAM, J.
Rpa

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