

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2016

PRONOUNCED ON : 01.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)NO.1720 of 2012

and

M.P.No.1 of 2012

Gunasekaran

... Petitioner/Petitioner

--Vs--

Elangovan

... Respondent/Respondent

Prayer: Civil Revision Petition filed under Section 227 of C.P.C. against the I.A.No.87 of 2007 in O.S.No.477 of 2004, on the file of the District Munsif Court, Panruti.

Petitioner : Mr.K.Moorthy

Respondent: Mr.Lakshmi Narayanan
for M/s.V.Raghavachari

O R D E R

The defendant in the suit in O.S.No.477 of 2004 is the Civil Revision Petitioner herein.

2. The case of the plaintiff is that the defendant borrowed a sum of Rs.50,000/- from the plaintiff on 06.05.1998 for his family expenses and to discharge other debts. By executing a promissory note dated 06.05.1998 in favour of the plaintiff on receipt of valuable consideration of Rs.50,000/- with the undertaking to repay the same on demand with interest at the rate of 16% per annum. The plaintiff further states that the said promissory note has been duly executed, validly attested and supported for full consideration in favour of the plaintiff.

3. After receipt of the said amount, on 28.03.2001 the defendant has paid a sum of Rs.1,000/- towards interest and made an endorsement in the promissory note. But, even after that the

defendant did not pay any amount either principal or interest. Therefore on 28.11.2003, the plaintiff has sent a lawyer notice to the defendant, calling upon him to discharge the promissory note debt amount. Though the defendant has received the notice on 02.12.2003, but he has neither replied nor paid any amount and also not come forward to discharge the promissory note debt amount. Therefore, the plaintiff has sent a lawyer notice on 02.12.2003, but thereafter there was no reply or made repayment. Therefore, the plaintiff has filed the above suit before the learned District Munsif Court, Panruti for the claim of a sum of Rs.84,366/- and subsequent interest for the Principal amount of Rs.50,000/- at the rate of 12% per annum till the date of realization.

4. The said suit was decreed on 16.06.2006 directing the defendant to pay the said amount of Rs.84,366/- with interest at the rate of 6% till the date of realization.

5. After the decree, this petitioner / defendant has filed an application to condone the delay of 101 days in filing the petition to set aside the exparte decree dated 16.06.2006 with a delay of 101 days in filing the set aside application in I.A.No.87 of 2007. In the said application, the petitioner / defendant stated that though the suit was filed for recovery of amount from the petitioner and the same was contested by the Defendants by filing written statement. The petitioner has also states that the case was posted on 14.06.2006 for cross examination of PW1. Thereafter, the learned District Munsif, Panruti, was directed the plaintiff to bring all the witnesses on 15.06.2006 and the case was posted on the same day. The case was posted on that day, due to the absence of the defendant and his counsel, the plaintiff's witness was examined and posted for cross examination of PW1, but there was no appearance on 15.06.2006 also and hence it is posted for judgment on 16.06.2006. The learned counsel for the plaintiff also represented the Court that he wanted to get instructions from the petitioner / defendant since he was unable to cross examining the PW1 and other witnesses, but the case was posted on 16.06.2006 for Judgment without giving time to the counsel for the petitioner / defendant.

6. The petitioner / defendant also states that without giving any fair opportunity to the petitioner / defendant, the Court below namely the District Munsif Court, Panruti, has closed the evidence. Though the petitioner/defendant has filed the application to re-open the case and the same was rejected and pronounced the judgment on 16.06.2006.

7. The case of the petitioner / defendant is that the judgment pronounced by the learned District Munsif Court, Panruti, in O.S.No.477 of 2004 dated 16.06.2006 is deemed to be an exparte decree, since he has not given opportunity to the petitioner / defendant to cross examine the witnesses of the plaintiff and pronounced the judgment.

8. The petitioner / defendant also come forward by saying that during that period he was in South Africa and return back only last week of September 2006 and he was unable to contact his counsel and hence he filed the application to set aside the exparte decree with the delay of 101 days in filing set aside application, which was filed in I.A.No.87 of 2007.

9. On receipt of the notice, the respondent filed a counter stating that originally the case was posted for cross examination of PW1 by the defendant on 13.06.2006. But, on that day, it was adjourned to 14.06.2006 for cross examination of PW1 by the defendant and also posted for further plaintiff side witness. The respondent / plaintiff also states that once again the case was adjourned to 15.06.2006 with an endorsement "no further adjournment on 15.06.2006". The plaintiff's further evidence of PW2 chief examination affidavit filed and examined the PW2. But, neither the petitioner/defendant nor his counsel were present before the Court and hence the evidence was closed and there was no oral evidence on the side of the defendant and hence the learned District Munsif Court, Panruti, was posted the matter on 16.06.2006 and on that day the judgment was passed on merits.

10. The respondent / plaintiff has also states that aggrieved against the said decree and judgment dated 16.06.2006, the petitioner / defendant ought to have preferred an appeal before the Appellate Court and he could have get the order in the suit for the remand back to the trial Court namely the District Munsif Court, by setting aside the decree and judgment in an appropriate proceedings. When there is a judgment on merit it is not correct to contend that merit judgment is deemed to be exparte decree as stated in the affidavit filed by the petitioner / defendant. Therefore, the respondent / plaintiff stated that a very application filed under Order 9 Rule 13 is not maintainable in merit decree, the delay petition filed under Section 5 of Limitation Act is also not maintainable and sought for the learned District Munsif Court for dismissal of the petition.

11. Considering both side arguments, the learned District Munsif has dismissed the above application by stating that originally on 21.07.2005, the suit was decreed exparte and later on, the same was set aside by the very same Court in I.A.No.1424 of 2005. Thereafter, the said suit was posted for several hearings and even after giving opportunity to the petitioner / defendant for cross examination of the PWs, but the petitioner / defendant without utilize the same and not appear before the Court and hence the decree was passed on 16.06.2006 on merits.

12. The learned District Munsif has also states that the suit decree was passed on merits only and not an exparte and hence he ought to have filed an appeal against the decree only and dismissed the application.

13. Heard Mr.K.Moorthy, learned counsel appearing for the petitioner and Mr.Lakshmi Narayanan, learned counsel appearing for the respondent and perused all the records.

14. On perusal of the judgment and decree passed in O.S.No.477 of 2004 dated 16.06.2006, the judgment was passed on merits only and not an exparte. Once the judgment and decree was passed on merits, it is the bounden duty of the petitioner / defendant to approach the Appellate Court for filing an appeal, but without doing the same, he has filed the present application in I.A.No.87 of 2007 for condoning the delay of 101 days in filing the set aside application since the decree is exparte decree. He has also not given any valid reason as if, the decree is exparte decree. It is settled law that once the Court concern has passed its Judgment on merits, there is no question of Exparte Judgment and no law permits the party concern to file petition for setting aside the merits Judgment. Therefore, the very application filing for set aside the decree and delay petition is not maintainable in law. The order of the learned District Munsif, Panruti, is perfect and valid in law. Therefore, there is no necessity for warrant of interference by this Court.

15. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The District Munsif Court,
Panruti.

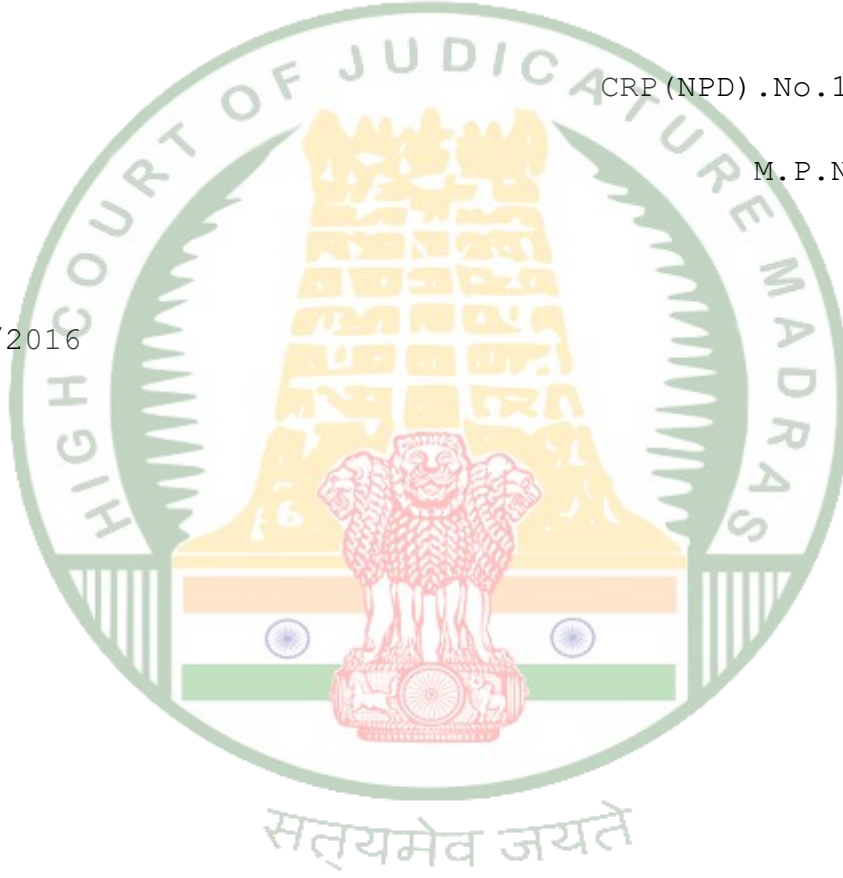
+lcc to M/S.V.Raghavachari, Advocate sr.61666

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