

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **N. AUTHINATHAN**

C.R.P.(NPD)No.3804 of 2009

and

M.P.No.1 of 2009

Sreerangarayan

... Petitioner

vs

Sarasu

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order made in I.A.No.528 of 2008 in O.S.No.262 of 2007 on the file of District Munsif Court, Kangeyam dated 19.08.2008.

For Petitioner : Mr.V. AyyaDurai
For respondent : Mr.N. Manokaran

ORDER

The petitioner is the defendant in O.S.No.262 of 2007 on the file of District Munsif Court, Kangeyam. The suit is for recovery of

Rs.20,385/- on the basis of a Promissory Note. The suit was decreed ex-parte inasmuch as the petitioner remained ex-parte and allowed a decree to be passed on 23.07.2007.

2. The petitioner/defendant filed a petition to set aside the ex-parte decree with a delay of 218 days. The application in I.A No.528 of 2008 was filed to condone the said delay.

3. In the affidavit, filed in support of the petition, the petitioner has stated that due to his illness, he was unable to appear on the date of hearing on 17.11.2007. Immediately after his recovery from his illness, he came to know of the ex-parte decree. According to him, there was no negligence and carelessness on his part.

4. The respondent/plaintiff filed her counter denying the averments made in the petition. The respondent/plaintiff in her counter stated that in pursuance of the decree, she has filed an Execution Petition in E.P.No.131 of 2007. According to her, the petitioner/defendant appeared through his counsel in the Execution Petition by filing vakalat on 29.01.2008 itself. The Execution Petition

was adjourned from time to time for filing counter. Only on 26.02.2008, the petitioner has filed a counter stating that he has filed a petition to set aside the decree. However, he has filed a petition to set aside the exparte decree only on 27.3.2008 along with the petition under Sec.5 of the Limitation Act to condone the delay of 218 days.

5. The Court below refused to condone the delay on the ground that the petitioner has resorted to dilatory tactice.

6. The learned counsel for the petitioner/defendant would submit that the trial Court ought to have exercised its jurisdiction in favour of the petitioner and permitted him to meet the case on merits. According to him, the trial court erred in dismissing the petition.

7. The learned counsel for the respondent/plaintiff would submit that the petitioner has filed the present petition only to delay the execution proceedings. He has pointed out that the suit was filed on the basis of a based on a Promissory Note, executed by the petitioner/defendant on 09.08.2004 for Rs.15,000/-.

8. The specific case of the petitioner is that due to his illness, he did not appear before the court on the date of hearing on 17.11.2007 and after recovery from illness, he came to know of the decree and filed the petition for setting aside the ex-parte decree. It is important to note that in the affidavit, the petitioner did not specify the date on which he came to know of the decree. As pointed out by the trial Court, in its order, the petitioner appeared through an Advocate on 29.01.2008 in the Execution Proceedings in E.P.No.131 of 2007 in the said suit. However, he filed application to set aside the ex-parte decree only on 27.03.2008. He has not chosen to file the application immediately after receipt of the notice from the Executing Court. It would indicate that he was not anxious to minimise the delay.

9. As already pointed out, the suit is based on promissory note. Except the bald statement of the petitioner, no acceptable material has been placed before the court in support of the plea of the petitioner. Having regard to the totality of the facts and circumstances of the case, this Court is of the view that request of the petitioner cannot be granted inasmuch as the delay is inordinate and unexplained.

10. This Court does not find any error in the order of the Court below, rejecting the application for condonation of delay. The Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected MP is closed.

24-11-2016

sr

Index:yes/no
website:yes/no

To

The District Munsif Court, Kangeyam

N. AUTHINATHAN,J.,

sr

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