

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.649 of 2016

M.Perumal

... Petitioner

vs.

1.Mrs.S.Sangeetha

2.D.Nagarajan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.10955 of 2015 in O.S.No.1992 of 2012 dated 29.10.2015 on the file of III Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.K.Venkatesan

ORDER

The plaintiff in the original suit is the petitioner in the present Civil Revision Petition. He filed the suit against the second respondent herein arraying him as the sole defendant for recovery of a sum of

Rs.6,47,000/- on the basis of 5 promissory notes together with further interest from the date of plaint till realization on the principal amount borrowed, namely Rs.5,00,000/-.

2. During the pendency of the suit, the said Nagarajan, the second respondent herein sold one of his landed properties to the first respondent herein. Hence, the petitioner/plaintiff filed an application I.A.No.13326 of 2012 to implead S.Sangeetha, the first respondent herein as second defendant. No direct service of notice was effected. Only substituted service came to be effected. An ex parte order impleading her as second defendant came to be passed on 24.10.2013. Thereafter also, no summons was served directly. The service was effected by substituted service in the form of publication in the newspaper. The first respondent/second defendant, who is contesting another suit filed by the son-in-law of the petitioner herein/plaintiff, did not contest the present suit because she was not actually served with summons. Nagarajan, the second respondent/first defendant having lost interest after filing of the written statement did not contest the suit. The same resulted in an ex parte decree being passed against the respondents 1 and 2 herein on 03.06.2014. As the decree directed not only the second

respondent/first defendant, but also the first respondent/second defendant, who has nothing to do with the borrowal made by the second respondent/first defendant, the first respondent/second defendant, on coming to know that such a decree was passed against her also, filed an application in I.A.No.10955 of 2014 under order IX Rule 13 CPC to set aside the *ex parte* decree dated 03.06.2014. As it was not filed within 30 days from the date of passing of the *ex parte* decree, it was accompanied by an application I.A.No.11787 of 2014. The said application filed under Section 5 of the Limitation Act was allowed. As against the said order no challenge was made by the petitioner herein/plaintiff. Considering the averments made in the affidavit filed in support of I.A.No.10955 of 2014 and in the counter statement, the learned trial Judge came to the conclusion that the respondent herein/second defendant was prevented by a reasonable cause from appearing in the Court below to contest the case. Accordingly, the trial Judge passed an order on 29.10.2015 allowing the said application and setting aside the *ex parte* decree dated 03.06.2014.

3. The contention raised by the first respondent herein/second defendant that no summons was served on her and the same was the

reason for her non-appearance in the suit filed against the second respondent/first defendant in which she was subsequently impleaded was accepted by the trial Court. Order IX Rule 13 CPC itself mentions the absence of due service of summons as a ground for setting aside the ex parte decree. If the defendant proves that summons was not duly served, it mandates the Court to pass an order setting aside the decree as against him and upon such terms as to costs. Considering the scope of the above said provision and the reason assigned by the first respondent/second defendant, the learned trial Judge chose to allow the said petition. The challenge made to the said order, according to the considered view of this Court, cannot be sustained.

4. Though the order came to be passed on 29.10.2015. The revision came to be filed only on 01.02.2016. The provocation for filing such revision seems to be the filing of an application by the first respondent/second defendant under order VII Rule 11 CPC for the rejection of the plaint on the ground that no cause of action against her has been spelt out in the plaint. The prayer in the plaint is couched in such a way that not only the borrower, namely the second respondent herein/first defendant, but also the first respondent herein/second defendant should be directed to pay the amount claimed

in the plaint. In what way the first respondent / second defendant is held responsible is nowhere spelt out in the plaint. In view of the said circumstances, it shall be a mockery of justice if the petition filed by the first respondent/second defendant seeking an order setting aside the *ex parte* decree passed against her is dismissed. The learned trial Judge, has not committed any error or mistake or illegality in allowing the said petition. There is no merit in the revision challenging the said order. The revision deserves to be dismissed at the threshold.

In the result, the Civil Revision Petition is dismissed. No costs.

01.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

III Assistant Judge
City Civil Court
Chennai

P.R.SHIVAKUMAR.J.,

gpa

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