

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.662 & 1704 of 2016 &

C.M.P.Nos.3412 & 9124 of 2016

P.M.Balasubramanian
CRPs

... Petitioner in both

v.

S.V.Parasuraman
CRPs

... Respondent in both

Civil Revision Petition No.662 /2016 filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 11.02.2016 made in I.A.No.1244/2015 in O.S.No.12763 of 2010 on the file of I Additional City Civil Court, Chennai.

Civil Revision Petition No.1704 /2016 filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 01.03.2016 made in I.A.No.1244/2015 in O.S.No.12763 of 2010 on the file of I Additional City Civil Court, Chennai.

For Petitioner : Mr.M.S.Subramanian

For Respondent : Mr.D.Ashok Kumar_

COMMON ORDER

Challenging the conditional order passed in I.A.No.1244/2015 in O.S.No.12763 of 2010 on the file of I Additional Judge, City Civil Court, Chennai, the plaintiff has filed the Civil Revision Petition in CRP (NPD) No.662 of 2016.

2. Challenging the final order passed in I.A.No.1244/2015 in O.S.No.12763 of 2010 on the file of I Additional Judge, City Civil Court, Chennai, the plaintiff has filed the Civil Revision Petition in CRP (NPD) No.1704 of 2016.

3. The plaintiff filed the suit in O.S.No.12763 of 2010 for recovery of a sum of Rs.18,25,000/- together with interest on Rs.10,00,000/- at 36% per annum from the date of plaint till the date of realisation.

4. Since the defendant remained absent before the Trial Court, an ex-parte decree was passed on 29.06.2012. Thereafter, the defendant filed an application in I.A.No.1244 of 2015 to condone the delay of 563 days in filing the application to set aside the ex-parte

decree dated 29.06.2012.

5. In the affidavit filed in support of the application, in paragraph No.3, the defendant has stated that due to old age, he had chronically fell ill due to high Blood Pressure and Blood Sugar, therefore, he was unable to move freely and to carry out his day-to-day affairs. Further, he has stated that he is taking medical treatment in his native village and came to know about the ex-parte decree only when he received summons in E.P.No.3913 of 2013.

6. The plaintiff filed his counter and disputed the averments stated in the affidavit filed in support of the application before the Trial Court.

7. Before the Trial Court, the defendant produced his medical records as Exs.P1 to P5. From the medical records, it is clear that the defendant was taking treatment in Apollo Hospital, Chennai between 29.07.2014 to 26.04.2015. The application to condone the delay was filed on 4.2.2014. From the documents produced by the defendant, it is clear that the defendant was suffering from ailment during the period between 29.07.2014 to 26.4.2015 and was hospitalized. While the defendant was suffering from illness, he also took treatment in

another hospital, viz., B.S.S.Hospitals, Mandaiveli, Chennai. To prove the said contention, he also produced Ex.P2, discharge summary, dated 29.07.2014.

8. Accepting the reasons given by the defendant with regard to the delay in filing the application, the Trial Court allowed the application on 11.02.2016 on payment of cost of Rs.5,000/- to the plaintiff on or before 29.02.2016. Against this order, the plaintiff has filed the Civil Revision Petition in CRP (NPD) No.662 of 2016.

9. Pursuant to the order dated 11.02.2016, the defendant had complied with the conditional order by depositing the said sum of Rs.5,000/- to the credit of the suit and therefore, the Trial Court allowed the application in I.A.No.1244 of 2015 on 01.03.2016. Against this order, the plaintiff has filed the Civil Revision Petition in CRP (NPD) No.1704 of 2016.

10. As already stated, since the defendant has satisfactorily explained the reasons for the delay, the Trial Court has rightly condoned the delay on payment of costs.

11. Mr.M.S.Subramanian, learned counsel appearing for the petitioner-plaintiff submitted that the defendant may be directed to deposit atleast the principle amount of Rs.10,00,000/- to the credit of the suit as a condition precedent for setting aside the ex-parte decree. In support of his contention, the learned counsel, relied upon a judgment reported in **2015 (15) SCC 6599 [GMG Engineering Industries and others v. Issa Green Power Solution and others]** wherein, the Hon'ble Supreme Court held as follows:-

"10. In the present case, while the trial court has exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, in our view, the trial court should not have imposed such an unreasonable and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to go for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission on 1.08.2013, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial court, notice shall be issued to the respondents. In compliance with the order dated 1.08.2013, the appellants have deposited

Rs.50,00,000/- before the trial court. Since the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is liable to be set aside.

11. The order dated 16.04.2013 of the High Court passed in C.R.P. (NPD) (MD) No.4/2013 and C.R.P. (NPD) (MD) No.5/2013, is set aside and these appeals are allowed. Delay in filing the applications to set aside the ex- parte decrees is condoned and the ex-parte decrees passed in O.S. No.3 of 2011 and O.S. No.6 of 2011 are set aside and the suits are ordered to be restored to file. The appellants shall file their written statements within a period of six weeks if not already filed. Since the suits are of the year 2011 and the respondents are stated to be senior citizens, the trial court is directed to take up the suits at an early date and dispose of the suits expeditiously. It is made clear that we have not expressed any opinion on the merits of the matter. The amount of Rs.50,00,000/- deposited by the appellants before the trial court shall be invested in a Nationalized Bank so that the accrued interest may enure to the benefit of either party. In the facts and circumstances of the case, we make no order as to costs.

12. Mr.D.Ashok Kumar, learned counsel appearing for the

respondent-defendant submitted that the defendant is willing to deposit a sum of Rs.2,00,000/- to the credit of the suit without prejudice to the contentions raised by the defendant before the Trial Court.

13. In view of the submissions made by the learned counsel appearing for the respondent-defendant, the respondent is directed to deposit a sum of Rs.2,00,000/- to the credit of the suit in O.S.No.12763 of 2010 on the file of I Additional Judge, City Civil Court, Chennai, within a period of four weeks, from the date of receipt of a copy of this order. However, it is made clear that the said deposit is being made by the defendant without prejudice to his contentions raised by him in the written statement.

14. In view of the deposit of the sum of Rs.2,00,000/- by the respondent-defendant, the same shall be brought to the notice of the Trial Court and appropriate orders should be obtained from the Trial Court for the withdrawal of the said amount. On such deposit being made by the respondent-defendant, the I Additional Judge, City Civil Court , Chennai is directed to deposit the amount in the Indian Bank, Madras High Court Branch, Chennai in reinvestment scheme initially for a period of one year.

15. The learned counsel appearing for the petitioner-plaintiff submitted that the plaintiff has no objection for allowing the

application filed under Order IX, Rule 13 of the Civil Procedure Code, filed by the defendant, which is pending before the Trial Court.

16. In view of the submission made by the learned counsel appearing for the petitioner, the Trial Court is directed to allow the application filed under Order IX, Rule 13 of the Civil Procedure Code and dispose of the suit, within a period of three months, from the date of disposal of the application filed under Order IX, Rule 13 of the Civil Procedure Code. The petitioner-plaintiff is permitted to withdraw the sum of Rs.5,000/- deposited by the respondent-defendant to the credit of the suit in compliance of the order passed by the Trial Court in I.A.No.1244 of 2015.

With these observations, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2016

Index : Yes/No

Note : Issue copy of the order on 25.11.2016

Rj

To

I Additional Judge,
City Civil Court, Chennai.

M. DURAISWAMY,J.,

Rj

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