



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1987 of 2015 (NPD)

and

C.M.P(MD)No.9340 of 2016

S.K.Saji Prathap

.. Petitioner/petitioner/
Defendant

Vs.

N.Chandrasekaran Menon

.. Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the order and decreetal order, dated 21.06.2016 in I.A.No.224 of 2015 in O.S.No.4 of 2013 on the file of Sub Court, Padmanabapuram and allow the Civil Revision Petition.

For Petitioner : Mr.R.Devaraj

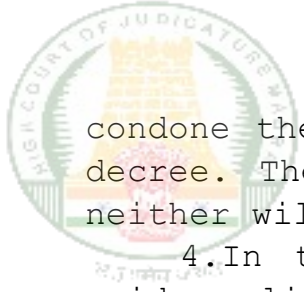
For Respondent : Mr.V.M.Balamohan Thambi

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order and decreetal order, dated 21.06.2016 in I.A.No.224 of 2015 in O.S.No.4 of 2013 passed by the Sub Court, Padmanabapuram.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed O.S.No.4 of 2013 before the Sub Court, Padmanabhapuram for recovery of money. An ex-parte decree was passed on 20.02.2013. The petitioner filed an application to set aside the ex-parte decree along with I.A.No.224 of 2015 to condone the delay in filing application to set aside the ex-parte decree, dated 20.02.2013.

3.According to the petitioner, the respondent did not send suit summons to his permanent address at Colachal but suit summons were sent to the Factory Address at Chennai. The suit summons were not sent on the petitioner. The petitioner came to know about the ex-parte decree only when the notice in E.P.No.41 of 2013 was received on 23.11.2014 at his permanent address at Colachal. Immediately, after receiving notice in the E.P., he engaged an Advocate in the E.P. and filed his vakalat on 19.12.2014 and filed the petition to set aside the ex-parte decree along with I.A.No.224 of 2015 to



condone the delay in filing the petition to set aside the ex-parte decree. The failure on the part of the petitioner in the suit is neither wilful nor wanton but due to non-service of summons.

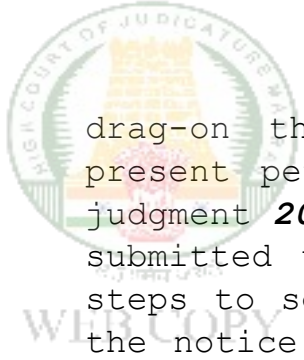
4. In the I.A., the respondent filed counter and opposed the said application stating that the suit summons and notice in the E.P., were sent to the both address of the petitioner to his permanent address at Colachal and to his factory address at Chennai. After receipt of summons, the petitioner did not appear before the Court and therefore, an ex-parte decree was passed. The petitioner entered appearance in the E.P., on 19.12.2014 and did not file counter and prayed for dismissal of the I.A.

5. The learned Judge considering the averments made in the affidavit and counter affidavit and arguments of counsel for both parties and also perused the materials on record, dismissed the application on 21.06.2016 holding that the petitioner did not state that there is change in the address given by the respondent and it is seen that the petitioner returned the summons sent by post.

6. Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

7. The learned counsel for the petitioner contended that the learned Judge failed to exercise his discretionary power while deciding the application filed under Section 5 of Limitation Act. The learned Judge failed to see that the suit summons were not sent to his permanent address at Colachal, but was sent only to his factory address at Chennai. The learned Judge failed to see that the summons sent to his factory address at Chennai was returned. The respondent ought to have taken to serve the notice to the petitioner in his permanent address at Colachal. The learned Judge failed to see that the petitioner has given permanent address at Colachal, but respondent sent summons only to the factory address. Only due to non-service of summons, the petitioner could not appear and contest the suit. Immediately, on receiving notice in the E.P.No.41 of 2013 at Colachal address, the petitioner has engaged the Advocate and filed the application to set aside the ex-parte decree along with petition to condone the delay in filing the petition to set aside the ex-parte decree.

8. The learned counsel for the respondent submitted that the petitioner did not deny that the suit summon was sent to the correct factory address at Chennai and the same was returned deliberately by the petitioner. The petitioner received notice in the E.P.No.41 of 2013 and filed Vakalat on 19.12.2014 and did not file any counter in the E.P., and filed the present application on 12.01.2015. Only to



drag-on the proceedings, the petitioner has come out with the present petition. In support of his contention, he relied on the judgment **2009(5) CTC 48** reported in **(Shanmugam vs. Chokkalingam)** and submitted that the petitioner did not explain the delay in taking steps to set aside the ex-parte decree from the date of receipt of the notice in the execution proceedings till he files the petition to set aside the ex-parte decree on 12.01.2015.

9.I have heard the learned counsel appearing for the petitioner and the respondent and also perused the entire materials on record.

10.From the materials, it is seen that the respondent has stated that the permanent address of the petitioner is at Colachal and suit summons were sent to the petitioner to his Factory address at Chennai. Summon sent by post was returned with an endorsement "un-served". It is not the case of the respondent that summons sent through Court was served on the petitioner and he did not appear. It is well settled that a party must be given an opportunity to put-forth his case on merits and should not be shutdown at the threshold itself. At the same time, it is also held that the intention of the party must be bonafide and should not be malafide. In the present case, the contention of the petitioner is that the suit summons were not served. There is nothing on record to show that the suit summons are served on the petitioner. From the affidavit, it is seen that the petitioner has given sufficient reason for condonation of delay. The learned Judge has not properly considered the contention of the petitioner that suit summons were not served on him.

11.In the result, the Civil Revision Petition is allowed and the order, dated 21.06.2016, passed by the Sub Court, Padmanabapuram made in I.A.No.224 of 2015 is set aside and I.A.No.224 of 2015 filed by the petitioner is allowed on payment of cost of Rs.1,000/- (Rupees Thousand only) to the Rojavanam Homeless & Aged Care Centre, Melur Road, Uthangudi, Madurai, within a period of one week from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall stand dismissed automatically, without further reference to this Court. No costs. Consequently, connected miscellaneous petition is also dismissed.

12.The suit is of the year 2013, the learned Sub Judge, Padmanabhapuram is directed to dispose the suit in O.S.No.4 of 2013 as expeditiously as possible, in any event, not later than June, 2017.

Sd/-

Assistant Registrar

/True Copy/



To

The Sub Judge,
Padmanabhapuram.

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C.R.P (MD) No.1987 of 2016 (NPD)
21.12.2016