

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.01.2017

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.1538 of 2011
and
M.P.No.1 of 2011

Bhuvaneswari .. Petitioner

vs.

Arumugam .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 13.12.2010 made in I.A.No.991 of 2010 in O.S.No.59 of 2007 on the file of the District Munsif Court, Tittakudi by allowing this Civil Revision Petition.

For Petitioner :Mr.S.Mani

For Respondent :No Appearance

ORDER

This petition is filed to set aside the order dated 13.12.2010 made in I.A.No.991 of 2010 in O.S.No.59 of 2007 on the file of the District Munsif Court, Tittakudi.

2. The Plaintiff has filed suit in O.S.No.59 of 2007 on the file of District Munsif Court, Tittakudi. Challenging the order made in I.A.No.991 of 2010 in O.S.No.59 of 2007, dated 13.12.2010, the petitioner has come before this Court.

3. The case of the plaintiff is that he filed a suit in O.S.No.59 of 2007, before the learned District Munsif Court, Tittakudi, for recovery of a sum of Rs.70,000/-, against the respondent/defendant. The case of the plaintiff is that the defendant had borrowed a sum of Rs.70,000/- from the petitioner/plaintiff on 10.03.2004 and agreed to repay the said amount with interest at the rate of 1% along with the principal amount. The defendant has executed the promissory note in favour of the plaintiff.

4. The said suit was decreed ex-parte against the respondent/defendant on 09.01.2008. Pursuant to the ex-parte decree, the respondent/defendant filed a petition for set aside ex-parte decree along with petition for condonation of delay of 971 days in filing the set aside application.

5. In the said Interlocutory Application in I.A.No.991 of 2010 in O.S.No.59 of 2007 filed by the defendant for condoning the delay of 971 days in filing the set aside ex-parte decree dated 09.01.2008, the defendant has given a reason stating that he has borrowed a sum of Rs.25,000/- on 20.09.2000 and Rs.25,000/- on 22.09.2000 from the husband of the plaintiff and agreed to repay the principal amount along with interest at the rate of 3% per annum. The plaintiff has executed two blank pronote in favour of the plaintiff's husband.

6. After borrowing the said amount, the defendant, the plaintiff has paid a sum of Rs.60,000/- as interest from 22.10.2000 to 22.02.2004 for a period of 36 months and thereafter he approached the petitioner's husband viz., Mr.Duraisamy and requested him to calculate interest at the rate of 2% interest and to deduct a sum of Rs.40,000/- towards interest and a sum of Rs.20,000/- from the principal amount from the amount of Rs.60,000/- paid and further requested to return the two pronotes.

7. Taking vengeance against the respondent/defendant has filed a suit by using one pronote in the name of Tmt.Bhuvaneswari wife of Mr.M.Duraisamy, stating that on 10.03.2004, the

respondent/defendant has borrowed a sum of Rs.70,000/- and used another pronote stating that the father in law of Mr.M.Duraisamy has borrowed a sum of Rs.70,000/- on 10.03.2004 and also filed another suit. After receipt of the summons in both the suits, the defendant approached the said Mr.M.Duraisamy, the husband of the plaintiff. But, at that time Mr.M.Duraisamy informed the defendant that he should pay the entire principal amount of Rs.50,000/- along with Rs.20,000/- as Court expenses totalling Rs.70,000/- and he was ready to withdraw both the suits. Because of the said request made by the defendant to the plaintiff's husband viz., Mr.M.Duraisamy, the defendant has not appeared on 09.01.2008. Thereafter, on receipt of warrant only he came to know that he was set ex-parte and the suit was decreed on 09.01.2008. Therefore, he has filed the set aside application along with condonation of delay of 971 days and prayed the trial court to condone the delay.

8. A counter affidavit was filed by the petitioner/plaintiff denying all the allegations set out in the affidavit. After the ex-parte decree was passed on 09.01.2008, an execution petition was filed by the plaintiff, which was served on 18.08.2009 and thereafter, the defendant has engaged the counsel and appeared on 18.09.2010,

29.09.2010, 29.10.2010, but no counter has been filed in the execution petition and there was no warrant issued by the Executing Court. But, the defendant himself came forward by paying the amount of Rs.1,000/- in execution petition and on 24.11.2008, he has also paid a sum of Rs.25,000/-. But all of sudden, without filing any written statement, the defendant has filed the petition for setting aside the ex-parte decree along with delay of 971 days. Therefore, the petitioner/plaintiff prayed for dismissal of the said application filed by the defendant.

9. Considering the submissions made on both sides, the learned District Munsif, Tittakudi, was pleased to allow the application on 13.12.2010 with costs of Rs.250/-. Therefore, by giving one more opportunity to the defendant by following the principles of natural justice, the learned Judge has allowed the said application with costs of Rs.250/- which would be paid on or before 22.12.2010. Challenging the said order, the petitioner/plaintiff has filed the present Civil Revision Petition before this Court.

10. I heard Mr.S.Mani, learned counsel appearing for the

petitioner and there is no representation for the respondent.

11. The case of the plaintiff is that he has filed the suit in O.S.No.59 of 2007 for recovery of Rs.70,000/- along with interest. The said suit was decreed ex-parte on 09.01.2008. But, after 971 days, the respondent/defendant has filed the application for setting aside the ex-parte decree along with condonation of delay in I.A.No.991 of 2010.

12. Admittedly, the defendant has not given any valid reason for the above huge delay of 971 days. But this Court, it is seen that for recovery of amount, along with this suit, one another suit was also filed by the father of the plaintiff viz., Bhuvaneswari. Therefore, both the suits should be decided only on merits for the simple reason that whether the amount was borrowed by the defendant was true or not would be came to only by way of trial. Therefore, this Court accepted the order passed by the learned District Munsif Court, Tittakudi, on condition that the respondent/defendant should pay 50% of the decree amount within a period of four weeks from the date of receipt of a copy of this order.

13. In the result:

(a) The Civil Revision Petition is dismissed, confirming the order passed in I.A.No.991 of 2010 in O.S.No.59 of 2007;

(b) The respondent/defendant is directed to pay 50% of the decree amount within a period of four weeks from the date of receipt of a copy of this order;

(c) If the respondent/defendant fails to pay the said amount within time stipulated by this Court, the petitioner/plaintiff is left open to proceed the execution proceeding in accordance with law.

(d) On payment of 50% of the decree amount, the trial court is directed to number the set aside petition and pass order by giving notice to both parties;

(e) On passing order in the set aside petition, the trial court is directed to dispose the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

M.V.MURALIDARAN,J.

To
The District Munsif Court,
Tittakudi.



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