

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.12.2016

Date of Verdict : 06.01.2017

CORAM

THE HONOURABLE DR. JUSTICE **C.V.KARTHIKEYAN**

C.R.P.PD.No. 180 of 2014

M/s. Punjab National Bank,
K.K.Nagar Branch,
No.347, Dr.A.Lakshmanaswamy Salai,
K.K.Nagar, Chennai – 600 078,
Rep by its Chief Manager

...Petitioner

Vs.

1. K.Murugapiran
2. M.Parathanan
3. General Manager,
ICF, Chennai – 600 038.
4. Chief Post Master General,
Department of Post,
Head PO, Anna Salai,
Chennai.

...Respondents

Prayer:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the orders of the learned III Additional Judge, City Civil Court, Chennai, dated 10.10.2013 in I.A.No. 8985 of 2011 in O.S.No.9301 of 2006 seeking that the same may be set aside.

For Petitioner : Mr.P.B.Sampath Kumar

For Respondent : Mr.G.Mohan Raj for R1

Mr.Parathanaman for R2

Mr.J.Harikrishna for R3

Mr.Srinivasan for R4

ORDER

This civil revision petition has been filed by the plaintiff in O.S.No.9301 of 2006 on the file of the third Additional Judge, City Civil Court, Chennai. The above O.S.No.9301 of 2006 has been filed by the revision petitioner, which is a nationalised bank, for recovery of money for a sum of Rs.8,11,551/- together with interest and costs. Since the defendants did not appear, they had been set ex-parte and an ex-parte decree dated 5.12.2007 had been passed by the that Court. Pursuant to the ex-parte decree, the revision petitioner had filed insolvency petition in I.P.No.1 of 2011 before this Court seeking to adjudicate the respondent herein as insolvent under Sections 9,10,11,12 and 13 of the Presidency Towns Insolvency Act 1909. The first respondent herein had taken out an application to set aside the ex-parte order dated 07.06.2007, which was dismissed by the III Additional Judge, City Civil Court, Chennai. After the

ex-parte decree has been passed, the first respondent had filed the application in A.No. 8595 of 2011 with the very same affidavit to condone the delay of 1173 days to set aside the ex-parte decree. That application was allowed. Challenging the said order, the revision has been filed before this Court.

2. The learned counsel appearing for the revision petition brought to the notice of this Court the fact that the very same averments mentioned in the affidavit filed in support of the petition to set aside the ex-parte order which was dismissed, have been accepted by the very same Court and the delay in setting aside the ex-parte decree has been condoned.

3. It is seen from the records that while condoning the delay of 1173 days in setting aside the ex-parte decree, the medical certificate was produced for a period between 05.11.2007 to 23.09.2008. The application was dated 22.03.2011 and no medical records were produced for the period between 23.09.2008 and 22.03.2011. This has been pointed out by the learned counsel for the revision petitioner challenging the impugned order. In fact, in the order under challenge, the III Additional

Judge had cited precedents without giving the cause title and the ratio laid down therein.

4. The learned counsel appearing for the respondents stated that it is a fact that the first defendant did not appear before the trial Court and had suffered the ex-parte decree. Further the learned counsel stated that setting aside the ex-parte order is a mere formality and the Court should look into the plight of the first respondent who had suffered the ex-parte decree.

4. I have carefully considered the said contention. Primarily in a Court of law, innocence or ignorance cannot be sought as a reason seeking indulgence of this Court. Judicial proceedings involves expenses while filing a suit claiming money due, the plaintiff is also liable to pay Court fee and also incur additional expenses towards Advocate fees and other incidental expenses. The appearance or non-appearance of the defendants has to be viewed strictly, since the judicial proceedings are not platform proceedings. If a defendant has knowledge of the suit, he must appear before the Court to put forward his defence and challenge the claim of the plaintiff. He also has an option of non appearance before the

Court. If he exercises such option, then after a period of more than four years he cannot, as a matter of right, claim indulgence once again revisit the judicial proceedings. The sanctity of judicial proceedings have to be preserved and the Courts cannot grant indulgence and condone deliberate absence. In so far as this case is concerned, it is clear from the averments in the affidavit that sickness has been pleaded as the reason for the delay of 1173 days on filing application to set aside the ex parte decree. The said reason has not been substantiated by producing acceptable medical records. Therefore, I have no hesitation in allowing the civil revision petition and reversing the order of the III Additional Judge, City Civil Court, Chennai.

5. Consequently, the Civil Revision Petition is allowed. I.A.No.8595 of 2011 in O.S.No.9301 of 2006 on the file of the learned III Additional Judge, City Civil Court, Chennai is dismissed. No costs.

06.01.2017

Index :Yes/No
rts

C.V.KARTHIKEYAN, J.

rts

To,

1. The III Additional Judge, City Civil Court, Chennai,
2. General Manager,
ICF, Chennai – 600 038.
3. Chief Post Master General,
Department of Post,
Head PO, Anna Salai, Chennai.

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