

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.4146 of 2017
and CMP.Nos.20194 & 20195 of 2017

P.Ramachandran

..Petitioner

Vs.

Palaniammal

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the impugned order allowing of petition to amend the plaint filed in IA.No.126 of 2012 in OS.No.132 of 2006 by the Court of the Additional Sub-Judge, Vriddhachalam by its order dated 07.02.2014

For Petitioner

: Mr.S.Kumaradevan

For Respondent

: Mr.S.Senthilnathan

ORDER:

According to the revision petitioner, the respondent has filed a suit in OS.No.132 of 2006 before the Additional Sub Court,

Vriddhachalam for recovery of money on the basis of promissory note. Summons have been sent to the defendant. But, it was returned. Thereafter, execution petition was filed before the Additional Sub Court, Vridhachalam. On receipt of notice from the executing court, the revision petitioner has filed an application to condone the delay of 1400 days in filing an application to set aside the ex-parte decree. In the aforesaid application, counter statement has been filed by the respondent. After considering the submissions of both parties, the court below has erroneously dismissed the said application. Therefore, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the petitioner has filed the IA.No.126 of 2012 in the aforesaid suit, by specifically stating that the petitioner was working at Dubai. Therefore, summons have not been received in the aforesaid suit. The respondent has also not followed the procedure as contemplated under Civil Procedure Code for effecting the mode of service to the defendant. Only on receipt of notice in the execution petition, revision petitioner came to notice that ex-parte decree was passed in the aforesaid suit. Immediately, the revision petitioner has filed the instant application before the court below.

But the court below has dismissed the said application. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. On perusal of the order passed by the court below, it has been stated that even the court below has observed that the respondent received the notice in the year 2009, but filed an application only in the year 2011. Therefore, the petitioner had knowledge in the year 2009, but application has not been filed immediately, therefore, there is no sufficient reason has been adduced in the affidavit to condone the inordinate delay in filing the said application. The court below rejected the contention of the revision petitioner and dismissed the said application. But, on seeing the affidavit filed by the revision petitioner, the revision petitioner has clearly stated that the petitioner has filed the applications in IA.SR.Nos.3579 and 3580 on 16.04.2009 to set aside the ex-parte order. But the court below has not taken into consideration of the aforesaid filing of application at the time of passing the order and therefore this Court has no hesitation to set aside the order passed by the court below, mainly on the ground that the revision petitioner has not received the summons in the suit. Secondly, it is the specific case of the revision petitioner that

the applications have already been filed in Diary Nos.3579 and 3580 in the year of 2009 itself. Therefore, without considering the aforesaid fact, the court below has rejected the applications is liable to be set aside. At this stage, the revision petitioner undertakes to deposit 50% of the decree amount before the court below to show his bonafide to contest the suit on merits.

4. In view of the above undertaking, this Court is inclined to pass the following orders.

a) The order passed by the court below in IA.No.126 of 2012 dated 07.02.2014 is set aside and remanded to the trial court to decide the matter afresh on condition that the revision petitioner shall deposit 50% of the decree amount to the credit of OS.No.132 of 2006 on the file of the Additional Subordinate Judge, Vriddhachalam within the period of eight weeks from the date of receipt of a copy of this Order, failing which the order passed by this Court in the Civil Revision Petition stands automatically dismissed.

b) Thereafter, the court below is directed to dispose of the said application within the period of twelve weeks from the date

of receipt of order..

5. Thus, the Civil Revision Petition is allowed with above terms. No costs.

28.11.2017

Speaking/Non-speaking order
Index :Yes/No
Internet: Yes/No
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D.KRISHNAKUMAR.J,

lok

To
The Additional Sub-Judge,
Vriddhachalam



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