

C.R.P(NPD).No.4433 of 2014

& M.P.No.1 of 2014

& C.M.P.No.7729 of 2016

V.M.VELUMANI,J.

Today, the above Civil Revision Petition is listed under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2.The learned counsel for the petitioner submitted that in the last line of the paragraph 11 of the order of this Court dated 14.11.2017, the order of attachment reads as Rs.10,00,000/- as against Rs.27,00,000/-.

3.In view of the above submission, the last line of the paragraph 11 of the order dated 14.11.2017, shall read as “The order of attachment of Rs.27,00,000/- dated 19.04.2013 in E.P.No.195 of 2012 is raised.”

4.The Registry is directed to make necessary corrections in the order dated 14.11.2017 made in the above C.R.P(NPD).No.4433 of 2014 and issue fresh order copy.

5.In all other aspects, the order of the Court dated 14.11.2017 shall remain unaltered.

30.01.2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4433 of 2014
and M.P.No.1 of 2014
and C.M.P.No.7729 of 2016

United India Insurance Co.Ltd.,
D.No.22B, Shop No.11,
Krishnaveni Complex,
Pallipalayam, Namakkal District. I. Petitioner

Vs.

1.C.Nallasivam
2.Minor.Bharani
3.Palaniammal
4.Arukkaniammal .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 02.01.2014 passed in I.A.No.1560 of 2013 in M.C.O.P.No.769 of 2008 on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.S.Arunkumar

For Respondents : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the order dated 02.01.2014 passed in I.A.No.1560 of 2013 in M.C.O.P.No.769 of 2008 on the file of the Principal District Court, Namakkal.

2. The petitioner is the second respondent and respondents are the claimants in M.C.O.P.No.769 of 2008 on the file of the Principal District Court, Namakkal. The respondents have filed the above claim petition for claiming compensation of Rs.20,00,000/- for the death of one Padmavathi, wife of the first respondent, mother of the second respondent, daughter of the third respondent

and daughter-in-law of the fourth respondent.

3. The petitioner received notice in the said claim petition and did not appear and contest the claim petition. An ex parte award was passed on 24.08.2009 directing the petitioner to pay a sum of Rs.20,00,000/- as compensation to the respondents on behalf of the owner of the vehicle. The petitioner filed I.A.No.1560 of 2013 to condone the delay of 1380 days in filing the application to set aside the ex parte decree.

4. According to the petitioner, after receiving notice in M.C.O.P.No.769 of 2008, they have engaged the panel advocate and handed over the vakalat. The petitioner's Advocate did not file vakalat and due to non filing of vakalat and did not contest the claim petition. The ex parte award was passed. The petitioner came to know about the ex parte award, when they received notice in execution petition filed by the respondents. Immediately, they filed said I.A. to condone the delay of 1380 days in filing the application to set aside the ex parte award. The delay is neither wilful nor wanton.

5. The respondents filed counter affidavit and denied all the averments made by the petitioner. The respondents submitted that the award is not ex parte award. The respondents have let in evidence and proved their claim. The reason given by the petitioner is not valid and prayed for dismissal of the application.

6. The learned Judge, considering all the averments made in the affidavit,

counter affidavit and materials available on record, dismissed the application.

7. Against the said order of dismissal dated 02.01.2014 made in I.A.No.1560 of 2013, the present Civil Revision Petition is filed by the petitioner.

8. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

9. The learned Judge taking into consideration the contention of the learned counsel for the petitioner that the petitioner has entrusted the case to the panel advocate and their advocate did not file vakalat and follow up the case, has held that this is not a fit case to condone the delay of 1380 days in filing the application to set aside the exparte award.

10. When the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the petitioner submitted that at the time of admission of the Civil Revision Petition, this Court directed the petitioner to deposit a sum of Rs.10,00,000/- to the credit of the M.C.O.P.No.769 of 2008. The petitioner failed to deposit the said amount within the time stipulated and the E.P. was proceeded with and attachment of the Bank Account of the petitioner was made. The petitioner deposited the entire award amount together with interest into the credit of the M.C.O.P.No.769 of 2008 on 19.07.2016. The learned counsel for the respondents seeks permission of this Court to withdraw the amount deposited by the petitioner. The learned counsel for the petitioner submitted that the petitioner has no objection to withdraw the sum of Rs.5,00,000/- and an opportunity may

be given to the petitioner to put forth their case on merits without prejudice and contentions made in the claim petition.

11. The first respondent/husband is permitted to withdraw the sum of Rs.4,00,000/-; The third and fourth respondents are permitted to withdraw Rs.2,00,000/- and Rs.1,50,000/- respectively. The second respondent/minor daughter is entitled to Rs.2,50,000/- and the Tribunal is directed to deposit the said sum of Rs.2,50,000/- in any one of the Nationalised Banks in the name of Minor. Bharani. The first respondent/father of the minor daughter is permitted to withdraw the interest once in three months. The order of attachment of Rs.10,00,000/-, dated 19.04.2013 in E.P.No.195 of 2012 is raised.

12. With the above direction, the Civil Revision Petition is allowed. The learned Judge is directed to pass orders on the application filed under Order IX Rule 13 of C.P.C., to set aside the exparte award within three weeks from the date of receipt a of copy of this order and petitioner is directed to file counter within two weeks thereafter. On such filing, the Tribunal is directed to dispose of the claim petition as expeditiously as possible, in any event, not later than three months from the date of filing of the counter.

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No costs. Consequently, connected M.P.No.1 of 2014 and C.M.P.No.7729 of 2016 are closed.

14.11.2017

Index : Yes/No
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To

The Principal District Judge,
Namakkal.



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