

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.07.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.4100 of 2011
and M.P.No.1 of 2011

Ponnusamy

.. Petitioner

Vs

Kandasamy

.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of CPC praying to set aside the order and decree dated 10.08.2011, made in I.A.No.41 of 2011 in O.S.No.44 of 2008 on the file of Sub Judge, Rasipuram.

For Petitioner : Mr.M.Elango

ORDER

This Civil Revision Petition has been filed to set aside the order and decree dated 10.08.2011, made in I.A.No.41 of 2011 in O.S.No.44 of 2008 on the file of Sub Judge, Rasipuram.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.44 of 2008 on the file of the Sub Judge, Namakkal. The respondent filed the suit for recovery of money. The petitioner entered appearance through Advocate and filed written statement in the month of March 2010 and subsequently he did not contest the suit and therefore, he was set ex-parte and an ex parte decree was passed on 07.7.2009.

3. The petitioner filed an application in I.A.No.41 of 2011 to condone the delay of 231 days in filing the application to set aside the ex parte decree. According to the petitioner, since he suffered from severe diabetic and high blood pressure, he went to Mysore for taking Siddha treatment and stayed there for sometime, owing to which, he could not appear before the trial Court on the date of hearing either in person or through counsel. The fact is that he remained absent before the trial Court and an ex parte decree was passed, which was known to the petitioner only at a later stage, after his return to Rasipuram, Namakkal.

4. The respondent filed counter and denied the averments stated in the application and opposed the said application. It is contended by the respondent that the petitioner appeared through an Advocate named N.Rathinavel on 05.11.2008. It is also submitted that even in the year 2009, 2010 and 2011, the petitioner through his Advocate had contested the other cases filed by him. The respondent also stated in his counter that the petitioner appeared before the District Munsif Court, Rasipuram to contest the suit in O.S.No.54 of 2010. Apart from that, the petitioner has also filed Civil Revision Petitions before this Court and contesting the case. It is also pleaded by the respondent that he is ready to prove his contentions during the time of enquiry/trial. He also denied that the reasons given by the petitioner is not true and the

petitioner did not have any acceptable evidence to substantiate his claim before the Court. Thereafter, the respondent filed an Execution Petition in R.E.P.No.71 of 2010 on 13.9.2010 to execute the decree dated 7.7.2009, and only thereupon when notice in the said Execution Petition was served on the petitioner, the petitioner has filed the present application in I.A. No.41 of 2011 and hence, he prayed for dismissal of the said application.

5. The learned Judge considering the fact that the petitioner had filed the application in I.A.No.41 of 2011, only when he received notice in REP.No.71 of 2010 filed by the respondent and more so, the petitioner did not have any substantiative evidence to prove the reason for the delay in filing the said application, and hence dismissed the application in I.A.No.41 of 2011 vide order dated 10.08.2011.

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

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7. Heard the learned counsel appearing for the petitioner and perused the materials available on record

8. The petitioner had filed the said application to condone the delay of 231 days in filing the application to set aside the ex parte

decree. According to him, he suffered from severe diabetic and blood pressure, and was taking Siddha treatment in Mysore, due to which, he could not attend the Court hearing on 07.7.2009, and therefore an ex parte decree was passed. This fact was known to him only at a later stage and by that time a lapse of 231 days had occurred in filing the application. On the other hand, the respondent filed counter and stated that apart from the said case, the petitioner also contested the other case filed by him through his counsel one N.Rathinavel in the year 2009. It is also contended by the respondent that the petitioner appeared the Court proceedings of other cases in the year of 2010, 2011 and 2012, in which he was a party. It is also represented that the petitioner had filed the suit in O.S.No.54 of 2010 before the District Munsif Court, Rasipuram and revision petitions were also filed by the petitioner before this Court. It appears that when notice in Execution Petition in R.E.P.No.71 of 2010 was served on the petitioner on 13.09.2010, the petitioner had filed this application, which proves his intention to drag on the proceedings. More so, the petitioner had not disputed the fact that he was contesting other Court proceedings in the District Munsif Court, Rasipuram in O.S.No.54 of 2010 and also the Civil Revision Petition filed before this Court. It is well settled that the application for condonation of delay must be considered liberally. The parties must be given an opportunity to put forth their case on merits, but the intention of the party should not be malafide to drag on the

proceedings. In the present case, the petitioner had filed the application in I.A.No.41 of 2011, after receiving notice in the execution petition filed by the respondent and taking note of the fact that the petitioner had not denied that contentions of the respondent that he appeared before the other Court to contest the Court proceedings pending before the other courts and also the civil revision petitions filed before this Court. This shows the attitude of the petitioner is not bonafide and only with an intention to drag on the proceedings and to evade the respondent from enjoying the benefit of the decree, the petitioner has filed the application in I.A.No.44 of 2008 before the trial Court. Moreover, the reasons given by the petitioner for the delay in filing the application to set aside the exparte decree is not convincing and acceptable. The learned Judge has exercised his power conferred on him rightly and dismissed the application with costs. There is no error in the order of the trial Court warranting interference by the Court in this revision petition.

9.In the result, the Civil Revision Petition is devoid of merits and it is liable to be dismissed and hence the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2017

Speaking Order/Non-Speaking Order

Index : Yes/No

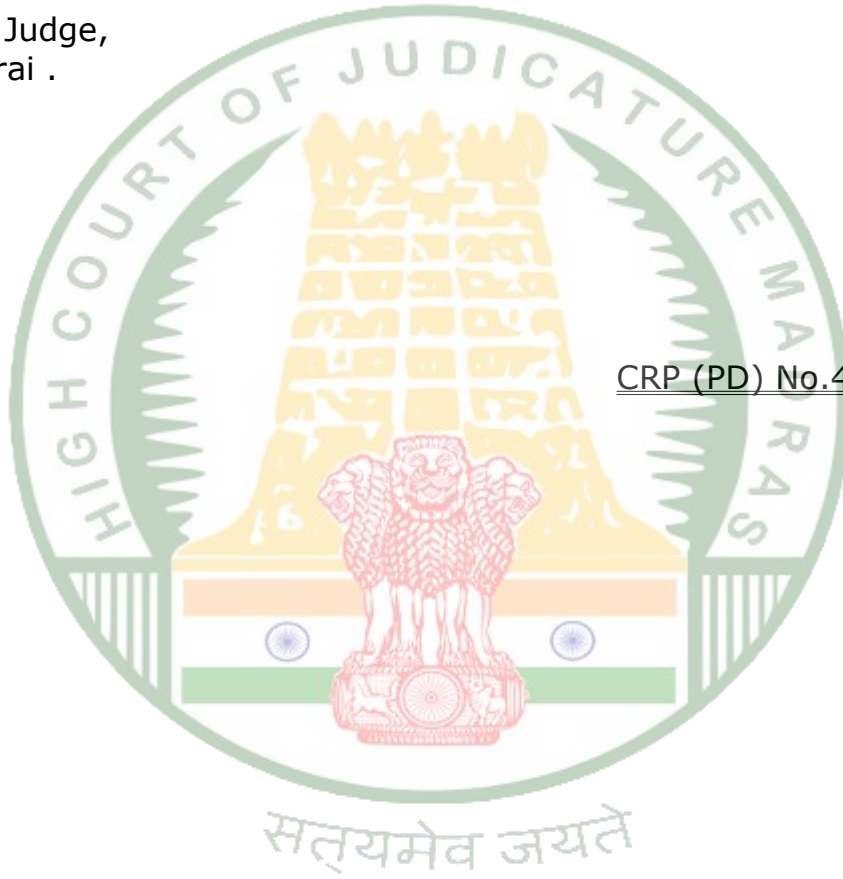
<http://www.judis.nic.in>Internet : Yes /No

V.M.VELUMANI,J

ds

To:

The Sub Judge,
Perundurai .



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