

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 07TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.3658 of 2017  
in  
A. No.2430 of 2017  
in  
C.S. No.391 of 2016

Mr.R.Ravinder Kumar,  
S/o.Late G.Rishabchand,  
Rishab House,  
No.30, Govindu Street,  
T.Nagar, Chennai-600 017.

... Applicant/Plaintiff  
(in A. No.3658 of 2017)

-Versus-

Mrs.S.Rasinal,  
W/o.M.Shiek Mohideen,  
Plot No.4/4, "E" Type, SIDCO Nagar,  
Phase 1, Villivakkam,  
Chennai-600 049.

... Respondent/Defendant  
(in A. No.3658 of 2017)

A. No.3658 of 2017:-

Application praying that this Hon'ble Court be pleased to set aside the order dated 05.07.2017 in A. No.2430 of 2017 in C.S. No.391 of 2016.

A. No.2430 of 2017:-

Mrs.S.Rasinal,  
W/o.M.Shiek Mohideen,  
Plot No.4/4, "E" Type, SIDCO Nagar,  
Phase 1, Villivakkam,  
Chennai-600 049.

... Applicant/Defendant

-Versus-

Mr.R.Ravinder Kumar,  
S/o.Late G.Rishabchand,  
Rishab House,  
No.30, Govindu Street,  
T.Nagar, Chennai-600 017.

... Respondent/Plaintiff

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed by the Plaintiff in CS.No.391 of 2016. The said suit has been filed under Order 37 of CPC, seeking a direction against the Defendant, to pay sum of Rs.25,39,335/- together with interest and costs.

2. Cause of action for the suit had arisen on 11.2.2008 when a promissory note for Rs.2,49,500/- was executed by the Defendant and on subsequent dates, when there was acknowledgement of the debt by the Defendant. Prior to institution of the suit, the Plaintiff had issued a legal notice on 7.9.2015. According to the Plaintiff, the Defendant had executed a promissory note on 11.2.2008 in favour of five persons, including the Plaintiff herein, his family members and his Hindu undivided family, for a sum of Rs.49,900/- and the Defendant received a total sum of Rs.2,49,500/- and he agreed to pay interest and since there was default in repayment on demand, the Defendant executed a written undertaking dated 25.11.2013 and also made a part payment of Rs.20,000/-. Another written undertaking dated 25.11.2013 was also executed and a part payment of Rs.25,000/- was made. There was earlier suit in CS.No.278 of 2003 filed by the Plaintiff against the Defendant and her husband's Proprietary Firm and that was settled out of court on 4.6.2007. Since the Defendant had not repaid the amount,

a legal notice was issued. It was under these circumstances that the suit under Order 37 of CPC was filed, seeking a judgement and decree for Rs.25,39,335/- together with interest and costs.

3. Since it was a suit filed under Order 37, the suit was adjudicated by the Master. By judgement dated 30.9.2016, the Master had found that the summons was served on the Defendant on 8.8.2016 and also found that the Defendant had not filed any application, seeking unconditional leave to defend the case within a period of ten days and hence, had set the Defendant exparte. The Master heard the learned counsel for the Plaintiff and also considered the pleadings and the documents filed along with the plaint. Under these circumstances, after due consideration, the Master had decreed the suit by judgement dated 30.9.2016.

4. The Defendant thereafter filed A.No.2430 of 2016, seeking to condone the delay of 121 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the said application, it has been stated that the matter came up before the Court on 27.7.2016, but the Applicant/ Defendant did not appear and consequently, an interim order of attachment was ordered. Thereafter, vakalat was filed and applications under Order VII Rules 11 (a) and (d) were filed, but they were returned for certain

compliance. Returns were not re-presented because of psychological disorder, for which the Applicant/ Defendant was taking treatment. Subsequently, an exparte order was passed. The Applicant/ Defendant came to know about the same only when notice on execution petition was filed. It was stated that there was a delay of 121 days in filing the application to set aside the exparte decree and it was therefore prayed that the delay should be condoned.

5. In the said application, a counter was also filed and in the counter, the Respondent/ Plaintiff has stated that notice in the attachment before judgement application in the suit was received by the Defendant on 15.7.2016. It was only thereafter that on 27.7.2016 this court had directed the Applicant/ Defendant to furnish security, failing which property would be attached. However, since security was not furnished, the property was attached by the court. Thereafter, the court bailiff executed a warrant of attachment and affixed a copy of warrant on the door/ wall of the property. The suit summons was also served on 8.8.2016. They had knowledge of the suit and had also filed vakalat on 9.8.2016. It was specifically claimed that the Applicant/ Defendant cannot claim any ignorance of the court proceedings. The fact that there was psychological disorder was seriously disputed and it was pointed out that no documents were filed in support of the same. It has been

stated that the name of the counsel was printed in the cause list on 20.9.2016 and again on 30.9.2016, on which date the suit was disposed of on merits and therefore, stated that the application to condone the delay should be dismissed.

6. The Master had passed the following order dated 5.7.2017 in A.No.2430 of 2017:-

"Heard both sides. The reasons assigned by the Applicant are totally not acceptable and vague. The delay of 121 days has not been explained properly by the Applicant. Further the averment of the Respondent are acceptable and satisfactory. Though, this petition is fit for dismissal, this court is of the opinion that one more chance can be given to the Applicant to prove her case. Accordingly, this application is allowed on payment of cost of Rs.5000/- to the Respondent on or before 13.7.2017. For compliance call on 17.7.2017."

7. Challenging this order, the Plaintiff has filed A.No.3658 of 2017. In the affidavit filed in support of this application, it has been stated that the order of the Master was erroneous and after having found that the reasons assigned by the Respondent/ Defendant are totally unacceptable and vague, he still proceeded to allow the application on payment of costs. It was stated that this approach of the Master is wrong and should not be permitted by this court.

8. A counter has been filed in the present application by the Respondent/ Defendant, wherein it has been stated that the delay had been sufficiently explained and it

was only because of that reasons, Master had condoned the delay on payment of cost of Rs.5,000/-.

9. I have carefully considered the arguments advanced by Mr.Nirmaleswar, the learned counsel for the Applicant/ Plaintiff and by Mr.Md.Ibrahim Ali, the learned counsel for the Respondent/ Defendant.

10. It is a fact that the notice in the suit was served in accordance with the due procedures on the Respondent/ Defendant. There is an obligation on the Respondent/ Defendant to appear and seek unconditional leave to defend the suit within a period of ten days. The Respondent/ Defendant did not resort to such procedure, which the law provided to them. On the other hand, she did not take any steps. In the mean while, the Applicant/ Plaintiff had also filed an application seeking attachment before judgement. Originally, this court had directed the Respondent/ Defendant to furnish security. Security was not furnished. It was only under such circumstances that attachment of property was ordered. Attachment was also effected. The court bailiff had affixed the order of warrant on the suit property. These are all facts which cannot be denied by the Respondent/ Defendant. During all these periods, the Respondent/ Defendant did not take any steps to join in the judicial proceedings.

11 A perusal of the materials reveals that the name

of the learned counsel for the Respondent/ Defendant was also printed in the cause list of the Master. Cause lists have actually been produced before this court. There was no representation. The Master had no other option, except to follow the procedures as contemplated in law. He considered the documents and pleadings and though it fit to decree the suit. The Applicant/ Plaintiff had also filed the execution petition. It was only at the stage when the notice was directed in the execution petition that the Respondent had come before this court, seeking an order to condone the delay of 121 days in filing the application to set aside the exparte decree.

12. In the reasons given in support of the said application were that the Respondent/ Defendant was having psychological disorders. However, she was represented by a counsel. The name of the counsel was also printed in the cause list. They did not appear. The Respondent/ Defendant also did not enter into the witness box to give evidence on this aspect. Even though the Respondent/ Defendant could not able to give evidence, she could have tendered evidence by some responsible persons, who knew about her ailment of psychological disorder and the Doctor who actually treated her. The Respondent/ Defendant had taken a very casual attitude. The Master had found as a fact that the reasons given cannot be countenanced, but unfortunately, after

holding so, has allowed the application, seeking condonation of delay on payment of costs. This cannot be accepted by this court. The claim of the Applicant herein can never be balanced on payment of Rs.5,000/- as costs. For all these circumstances, I hold that the order of the Master cannot be sustained.

13. In the result, this application is allowed and the order of the Master dated 5.7.2017 made in A.No.2430 of 2017 in CS.No.391 of 2016 is set aside.

Sd/-C.V.K.J

07.12.2017

//Certified to be a true copy//

Dated this the        day of                      2018  
JJ 15/2/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.