

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.4927 of 2011
and
M.P.No.1 of 2011**

T.P.Kumaravel

.. Petitioner

Vs.

P.Muthamil Selvan

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair order dated 14.11.2011 made in I.A.No.18 of 2011 in O.S.No.114 of 2007 (First Additional Sub Court, Erode) on the file of the learned Subordinate Court, Perundurai.

For Petitioner : Mr.P.Kannankumar

For Respondent : Mr.A.K.Kumarasamy

ORDER

This Civil Revision is directed against an Order dated 14.11.2011 of the Learned Subordinate Judge, Erode made in I.A.No.18 of 2011 in O.S.No.1114 of 2007.

2.The petitioner herein is the defendant in the above suit for recovery of money filed by the respondent / plaintiff.

3.According to plaint averment the petitioner herein borrowed a sum of Rs.2,30,000/- from the respondent/plaintiff on 06.09.2006 promising him to pay the said amount within two months and towards repayment had issued a cheque instructing him to encash the cheque on or after the stipulated time. Whereas it is the case of the respondent that the petitioner failed to keep up his promise and the cheque issued also came to be returned denoting account closed. Thereupon suit notice was issued demanding repayment, however even then the petitioner defaulted to pay the borrowed amount the above suit was filed for recovery of money.

4.The records show that the petitioner defaulted to appear before the Trial Court and conduct his case, whereupon he was set Ex-parte and therefore an ex-parte Decree came to be passed on 12.02.2008.

5.In said circumstances, it is found that the revision petitioner

claiming suffered out of medical ailment and further contending that he was out stationed at Kerala, filed an Interlocutory Application in I.A.No.473 of 2010 under section 5 of the Limitation Act seeking to condone the delay of 955 days in filing the application Order 9, Rule 13 of CPC to set aside Ex-parte decree passed against him on 12.02.2008.

6.On the side of petitioner two witnesses were examined, such that petitioner examined him as PW-1 and deposed that he suffered out of Jaundice and was under treatment in Kerala. The said version is found supported by PW-2 namely one Duraisamy who is the relative of the petitioner.

7.The said application was resisted by the respondent, contending that petitioner having absented wantonly and willfully and coming up with the instant application is an afterthought and that enormous delay of 955 days is not supported by any valid cause.

8.On appraisal of revision petitioner's application, the Trial Court came to conclusion that the reason projected is traditional and not proved.

9.Yet another finding of Trial Court is that after passing of above ex-parte decree, the respondent filed E.P.No.115 of 2009 and in the said execution petition the revision petitioner appeared and paid a sum of Rs.50,000/-towards part payment of cheque amount.

10.It is also contended that delay of 955 days as such projecting the petitioner has filed the application in mistake before yet another Court is baseless.

11.I heard Mr.P.Kannankumar, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned counsel for the respondent and perused the entire materials available on record.

12.It is noticed by this Court that in an earlier Civil Revision Petition in CRP.No.1114 of 2011 filed by the revision petitioner to suspend sale of his property in Court auction in the execution proceeding instituted against him in continuance of the above Ex-Parte Decree has observed vide Final order dated 24.8.2011 which is extracted hereunder:

“However, the following dates and events would show that the

petitioner deserves some indulgence:-

- (i) the decree for money was passed ex-parte on 12.02.2008;
- (ii) the petitioner filed an application to set aside the ex parte decree along with I.A. No. 141 of 2009, on 27.08.2009 in a wrong Court, viz., the II Additional Sub Court, Erode;
- (iii) After finding out that it was filed before the wrong Court, the petitioner withdrew the said application on 25.11.2009 and filed a fresh application in I.A. No 473 of 2010 on 17.12.2009 before the I Additional Sub Court, Erode;
- (iv) In the mean time, the suit papers were transferred to the Sub Court, Perundurai. Therefore, the petitioner allowed I.A. No. 473 of 2010 to be dismissed as not pressed on 04.10.2010, and, thereafter, filed the application which is now pending, viz., I.A. No. 18 of 2011 on 26.10.2010 before the Sub Court, Perundurai.

The above sequence of events would show that there has been a continuous action on the part of the petitioner in seeking to set aside the ex-parte decree."

13.It is found that the revision petitioner in the said application has submitted the unchanged reason towards his non appearance

before the Trial Court and this Court has found that the petitioner deserve some intelligence and this case liable to be considered with lenience, however on a condition that the revision petitioner shall pay part of the decree amount.

14.In the result:

(a) this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- to the respondent as cost within a period of four weeks from the date of receipt of a copy of this order;

(b) the Trial Court is directed to number the set aside application and to pass orders within a period of 15 days thereafter, by giving notice to both parties. Consequently, connected miscellaneous petition is closed.

02.02.2017

Note:Issue order copy on 13.12.2018

Internet:Yes

Index:Yes

vs

To

The Subordinate Judge,
Perundurai.

WEB COPY

M.V.MURALIDARAN, J.

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