

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1646 of 2007

1.M/S.Guru Dhall Mill and Industries
Represented by partner G.Ravindran

2.G.Ravindran
3.G.Rukmani
4.G.Suresh
5.P.Gurusamy nadar

.. Petitioners

Vs.

Rajendra Metha

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 27.09.2006 made in
I.A.No.6107 of 2005 in O.S.No.5111 of 2001 on the file of the
learned VIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.T.Pramod Kumar Chopda

For Respondent : Not ready in notice

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 27.09.2006 made in I.A.No.6107 of 2005 in O.S.No.5111 of 2001 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.5111 of 2001 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai. The respondent filed suit for recovery of money. The petitioners did not appear and obtain leave to defend the suit. The suit was decreed ex parte by the judgment and decree dated 02.04.2002. The petitioners filed I.A.No.6107 of 2005 under Order 37 Rule 4 of C.P.C. to set aside the ex parte decree.

3. According to the petitioners, the suit summons were not served on the petitioners and only when they received notice in I.P.No.119 of 2003 for adjudication of the petitioners as insolvents, they came to know about the ex parte decree and they filed the present application to set aside the ex parte decree within 30 days from the date of knowledge and therefore, there is no delay.

4. The respondent filed counter affidavit denying all the averments made in the application and submitted that the suit summons sent on three occasions to the petitioners were returned with an endorsement as 'door locked'. The summons were served on the petitioners by paper publication for the hearing on 20.03.2002. It is a valid service of summons. The petitioners paid a sum of Rs.50,000/- as part payment pending suit, which shows that they are aware of the suit proceedings.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application accepting the contention of the respondent.

6. Against the said order of dismissal dated 27.09.2006 made in I.A.No.6107 of 2005, the present civil revision petition is filed by the petitioners/defendants.

7. Though the civil revision petition is filed in the year 2007 and numbered as C.R.P.No.1646 of 2007, till today, the petitioners have not taken any steps to serve the respondent. In the cause list, it shows that batta with petition due regarding sole respondent, not ready in notice.

8. Heard the learned counsel for the petitioners and perused the materials on record.

9. From the materials on record, it is seen that the suit summons were sent on three occasions to the petitioners and the same were returned with endorsement as 'door locked'. In the circumstances, paper publication was effected and the learned Judge has accepted the same as valid service. The petitioners did not appear and obtain leave to defend the suit. The learned Judge decreed the suit *ex parte* and the petitioner filed the present application to set aside the *ex parte* decree on the ground that the suit summons were not served on them. They came to know about the *ex parte* decree only when notice in I.P.No.119 of 2003 was affixed in their door. The petitioners have not stated that the suit summons were not taken to their address. In this circumstance, service through paper publication is a valid service and the reasons given by the petitioners are not valid reasons to set aside the *ex parte* decree.

10. It is an admitted fact that the petitioners paid a sum of Rs.50,000/- by cheque pending suit. The petitioners are not

produced any document to substantiate the contention of the learned counsel for the petitioners is that the amount was paid as full and final settlement.

11. In view of the above facts, the learned Judge has rightly dismissed the application by giving cogent and valid reasons. I hold that there is no irregularity or illegality in the order of the learned Judge dated 27.09.2006 warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No

kj

To

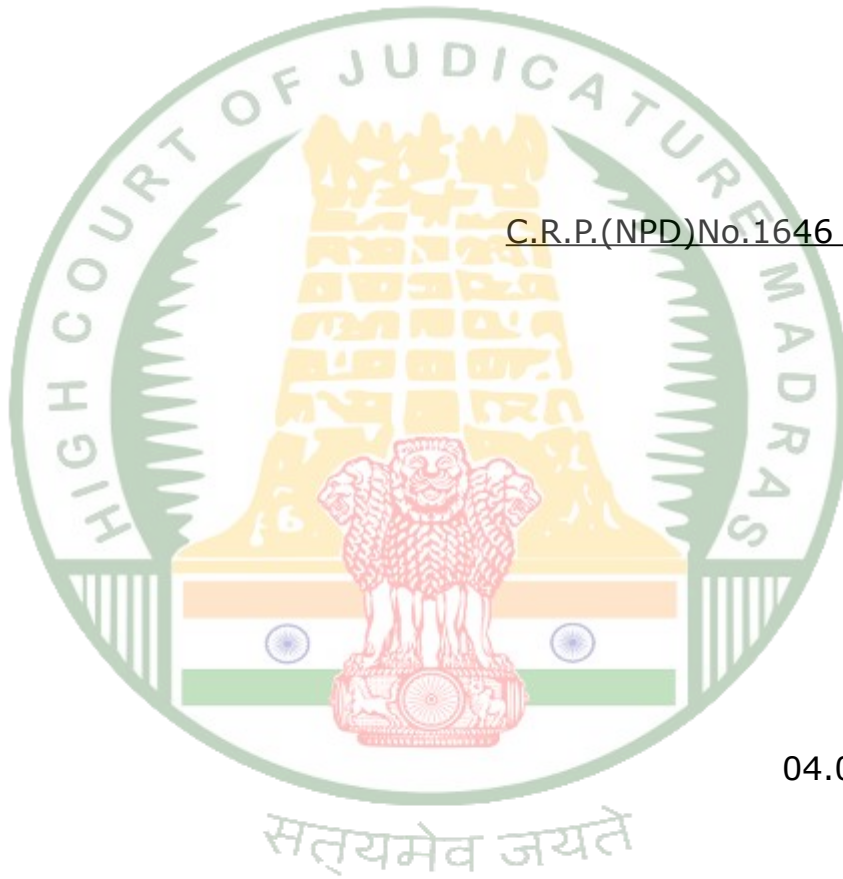
VIII Assistant Judge, City Civil Court, Chennai.

04.08.2017

सत्यमेव जयते
WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(NPD)No.1646 of 2007

04.08.2017

WEB COPY