

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3062 of 2009
& M.P.No.1 of 2009

Vijayasiman

.. Petitioner

Vs.

1.Shenbagavalli @ Shenbagam
2.Minor Poongavanam
3.Minor Gowrishankar

(Minors are represented by their
mother and natural guardian
the 1st respondent)

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the judgment and decree dated 06.04.2009 made in C.M.A.No.3 of 2008 on the file of the Principal District Court, Villupuram, confirming the fair and decretal order dated 23.11.2007 made in I.A.No.69 of 2007 in O.S.No.127 of 2001 on the file of the Principal Sub-Court, Villupuram.

For Petitioner : Mr.V.Lakshminarayanan

For R1 to R3 : Mr.S.Pushpakaran

ORDER

This Civil Revision Petition has been filed against the judgment and decree dated 06.04.2009 made in C.M.A.No.3 of 2008 on the file of the Principal District Court, Villupuram, confirming the fair and decretal order dated 23.11.2007 made in I.A.No.69 of 2007 in O.S.No.127 of 2001 on the file of the Principal Sub-Court, Villupuram.

2. The petitioner is the first defendant and the respondents are the plaintiffs in O.S.No.127 of 2001 on the file of the Principal Sub-Court, Villupuram. The first respondent filed suit claiming maintenance for herself and her minor children viz., respondents 2 and 3. The petitioner did not file any written statement and contest the suit. He was set exparte and exparte decree was passed on 03.10.2002. The petitioner filed I.A.No.69 of 2007 to set aside the exparte decree dated 03.10.2002.

3. According to the petitioner, he came to know about the exparte decree only on 03.09.2006, when he received a notice from the Court in the execution petition filed by the respondents.

4. The respondents filed counter affidavit and submitted that after exparte decree, in the complaint given by the respondents, petitioner appeared before the Deputy Superintendent of Police, but he did not agree for any compromise. The respondents filed E.P.No.158 of 2006 to execute the decree passed in their favour. After receipt of notice in the execution petition, the petitioner filed the application to set aside the exparte decree. The respondents denied that the petitioner came to know the exparte decree, only when the notice was served on him on 03.09.2006 in the execution petition filed by the respondents. The petitioner did not file any counter in the execution petition, arrest was ordered and he was produced before the Court. He paid Rs.25,000/- on that day, he was released on Muchalika to appear on 07.02.2007 and he was directed to pay 10% of the amount decreed within a week. The reason given by the petitioner for filing the application to set aside the exparte decree is contrary to the facts. Thus, he prayed for dismissal of the application.

5. Before the learned Judge, first respondent was examined as R.W.1 and one S.Kannaiyan, who was working as Deputy Superintendent of Police, was examined as R.W.2 and marked 22

documents as Exs.R1 to R22. The petitioner did not let in any oral and documentary evidence. One Panneerselvam was examined as C.W.1 and marked Ex.C1 as Court document.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, oral and documentary evidence let in by the respondents, dismissed the application.

7. Against the order of dismissal dated 23.11.2007 made in I.A.No.69 of 2007, petitioner filed C.M.A.No.3 of 2008 on the file of the Principal District Court, Villupuram.

8. The learned appellate Judge independently considering the materials on record and the order of the learned Judge, dismissed the C.M.A. by order dated 06.04.2009.

9. Against the order of dismissal dated 06.04.2009 made in C.M.A.No.3 of 2008, the present civil revision petition is filed by the petitioner.

10. The learned counsel for the petitioner submitted that notice in the pauper O.P. as well as summons in the suit were not served on the petitioner. By publication, service of summons completed. The newspaper, in which the publication was affixed, was not having wide circulation in the place, where the petitioner is residing. Both the Courts below did not consider the contention of the petitioner that the suit summons was not served on the petitioner. The Court witness has categorically stated that notice was served only on the higher authority of the petitioner and not on the petitioner.

11. The learned counsel for the respondents submitted that the suit summons was served by substituted service as per the procedure and it is a valid service. After the decree being passed in favour of the respondents, first respondent has given number of complaints before the Deputy Superintendent of Police and he conducted enquiry. The petitioner appeared before the Deputy Superintendent of Police, agreed to give a portion of the property and a sum of Rs.5,000/- every month towards maintenance to the respondents. The petitioner was aware of the decree passed against him and did not take immediate steps to set aside the exparte

decree. Even in the execution proceedings, he did not file counter, he was arrested and produced before the Court. He has paid Rs.25,000/- on the date as part payment and the learned Judge directed the petitioner to pay 10% of the decretal amount within one week. The petitioner has not paid that amount and file application to set aside the exparte decree only not to pay the amount of maintenance ordered by the Court and to drag on the proceedings. The petitioner did not file any application to condone the delay in filing the application to set aside the exparte decree and therefore, the present application is not maintainable.

12. Heard both sides and perused the materials on record.

13. The contention of the learned counsel for the petitioner is that the suit summons was not served on the petitioner. At the same time, he contended that the suit summons published in the publication was not commonly circulated in the place, where the petitioner is residing. This contention cannot be accepted. Any service by a substituted service by affixture in Court notice to the last known address through paper publication is valid service of summons on the defendant. In addition to that, after decree being

passed, the first respondent has given number of complaints before the Deputy Superintendent of Police. All the complaints filed by the respondents were marked as Exhibits. The Deputy Superintendent of Police conducted enquiry and petitioner & first respondent appeared before the Deputy Superintendent of Police and gave statement. First respondent also marked the statement given by the petitioner before the Deputy Superintendent of Police as Ex.P17, dated 22.02.2006 and statements given by the first respondent were marked as Exs.P15 and P16, dated 12.12.2005 and 22.02.2006. The petitioner did not deny that he gave statement before the Deputy Superintendent of Police on 22.02.2006. At least on 22.02.2006, the petitioner was aware of the exparte decree passed against him. Therefore, the contention of the petitioner that he came to know exparte decree only on 03.09.2006, when he received notice in the execution petition filed by the respondents is contrary to the facts. The petitioner did not file application immediately after 22.02.2006. The petitioner was set exparte and he was aware of the same on that date. When he filed a petition after 03.09.2006, he ought to have filed an application to condone the delay. The petitioner has not given any valid and acceptable reason for setting aside the exparte decree. In

the circumstances, both the Courts below have considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order passed by both the Courts below warranting interference by this Court.

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

18.07.2017

Index : Yes/No
Speaking/Non speaking order: Yes/No

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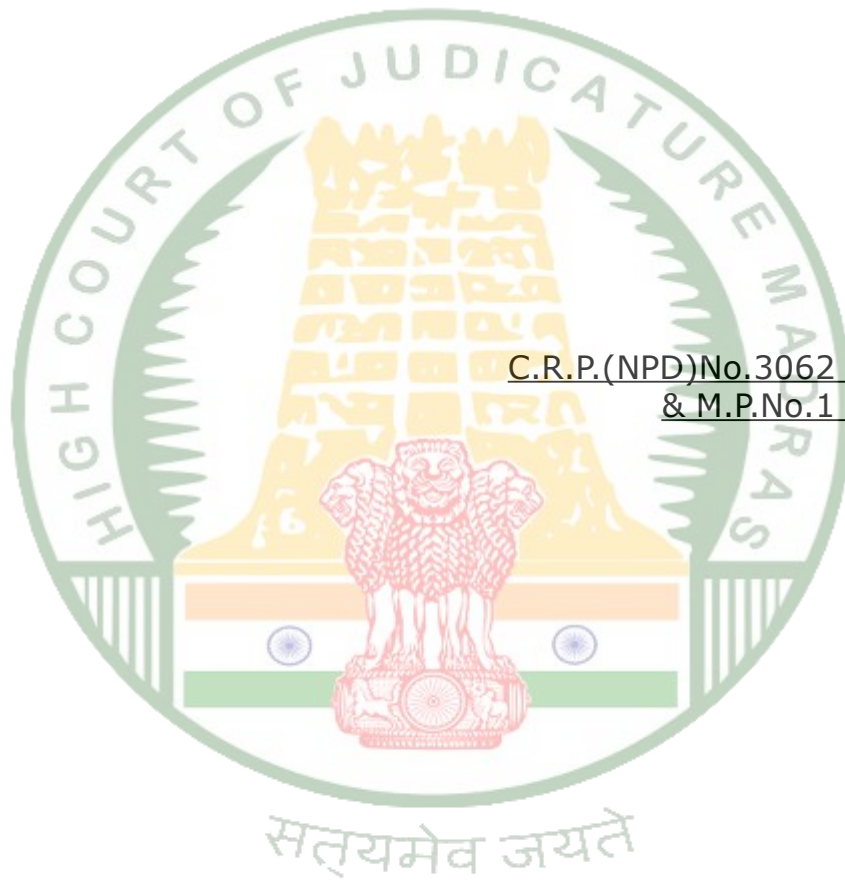
1.The Principal District Court, Villupuram.

2.The Principal Sub-Court, Villupuram.

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V.M.VELUMANI, J.

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