

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.3656 of 2013
and
M.P.No.1 of 2013

S.N.Surendra .. Petitioner

Vs.

Sriram City Union Finance Ltd.,
No.621, Sire Mansion 2nd Floor,
Anna Salai (Thousand Light),
Chennai – 600 006. .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C.,
against the order and decretal order dated 05.02.2013 passed in
I.A.No.14813 of 2011 in O.S.No.640 of 2007, on the file of the learned
XVI Judge, City Civil Court, Chennai.

For Petitioner : Mr.L.Dhamodaran

For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed against the dismissal of
revision petitioner's application filed under Section 5 of Limitation Act,

seeking to condone delay of 1356 days in filing an application to set aside the Ex-parte Decree in O.S.No:640 of 2007 on the file of the XVI Additional Judge, City Civil Court, Chennai.

2.The petitioner herein is the defendant in the above suit in O.S.No.640 of 2007 filed by the respondent/plaintiff finance company for recovery of money.

3.According to the respondent finance company, the petitioner was due towards a loan and he issued cheques to his liability. However the cheques came to be dishonored by the bank for want of sufficient funds. Hence the said suit in O.S.No.640 of 2007 was filed for recovery of money and the same came to be decreed Ex-Partly on 31.10.2007.

4.According to the revision petitioner, the respondent/plaintiff has purposefully failed to state the correct address of the revision petitioner.

5.The petitioner has not resided at any point of time in the address given by the plaintiff. Further it is revision petitioner's case that he has not received any loan as stated by the respondent finance

company.

6.It is his case that immediately on knowing Ex-parte decree, the petitioner filed an application to set aside the Ex-parte decree dated 31.10.2007. However as there was 1356 days delay in filing the above application from the date of decree, he took out an application in I.A.No.14813 of 2001 to condone the said delay.

7.The Learned Judge holding that the petitioner has failed to furnish documents showing that he resided elsewhere and not in the plaint address, thereby dismissed the application. The said order is under challenge in this Civil Revision Petition.

8.I heard Mr.L.Dhamodaran, learned counsel for the petitioner and perused the entire materials available on record. There is no representation on behalf of the respondent.

9.On perusal of the impugned order, it is seen that the Court below on the basis of the petitioner's averment has held that no finance company would file a suit for recovery of money as against stranger.

10.It is needless to say that the above approach of trial Court is erroneous. More so touching upon the merits and demerits of case is unwarranted while dealing with an application u/s 5 of Limitation Act.

11.All that have to be seen is that whether the delay is explained with proper reason or the petitioner is prevented by sufficient cause from filing this application in time.

12.Admittedly in this case on hand it is the petitioner's case that wrong address was indicated as address for communication on revision petitioner.

13.On perusal of impugned order it is further seen that instead of seeing as to whether the notice on petitioner was duly served but the Trial Court has gone into the issue as to whether the revision petitioner has given his residence address.

14.It is brought to notice of this Court, while admitting this Civil Revision Petition this Court has directed the petitioner to deposit 50% of claim amount. Pursuant to the order, the petitioner already

deposited the said amount.

15. Considering the case of the petitioner and also the fact that the petitioner has complied with the conditional order passed by this Court, this Civil Revision Petition is allowed and the condone delay application is also allowed and the trial Court is directed to number the set aside application by giving notice to the parties within a period of one month from the date of receipt of a copy of this order, thereafter on passing the order of set aside application, the Trial Court is directed to dispose the suit within one month. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2017

vs

Note: Issue order copy on 24.01.2019

Index: Yes/No

Internet: Yes/No

To

The XVI Judge,
City Civil Court, Chennai.

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M.V.MURALIDARAN.J.,

VS



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