



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.257 of 2017 (NPD)

and

C.M.P(MD)No.1200 of 2017

N.Mohan

.. Petitioner/Petitioner/Defendant

Vs.

R.Madhu

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to allow the Civil Revision Petition and set aside the fair and decreetal order, dated 4/01/2017 in I.A.No.327 of 2016 in O.S.No.76 of 2015, on the file of the III Additional District Judge, Tiruchirappalli.

For Petitioner : Mr.V.Singan

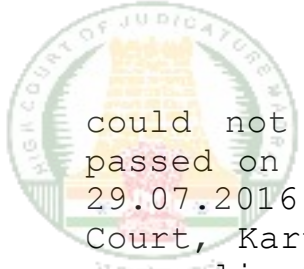
For Caveator/

Respondents :Mr.VR.Shanmuganathan

ORDER

This petition has been filed by the petitioner to set aside the fair and decreetal order, dated 4/1/2017 in I.A.No.327 of 2016 in O.S.No.76 of 2015 passed by the learned III Additional District Judge, Tiruchirappalli.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed suit in O.S.No.76 of 2015 before the District Court, Trichirappalli for recovery of sum of Rs.46,98,500/- together with interest at 18% p.a. The petitioner did not appear in the said suit and ex-parte decree was passed on 09.10.2015. The petitioner filed I.A.No.327 of 2016 to condone the delay of 276 days in filing the petition to set aside the ex-parte decree. According to the petitioner, from January 2014, he is residing at Chennai. Knowing fully well that the petitioner is residing at Chennai, the respondent filed suit showing the Trichy address and sent summons to Trichy address. Subsequently, by paper publication, suit summon was issued to the petitioner. The petitioner was not aware of paper publication and therefore, he



could not appear and contest the suit and ex-parte decree was passed on 09.10.2015. Only when he came to attend another case on 29.07.2016 in S.T.C.No.240 of 2016 on the file of the Fast track Court, Karur, he came to know about the ex-parte decree and filed an application to set aside the ex-parte decree.

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3.The respondent filed counter affidavit and denied all the averments made in the affidavit and submitted that the petitioner was not residing in Chennai at any point of time and suit summons sent to the petitioner to the Trichy address were not returned with an endorsement that he is not residing therein.

4.Before the learned Judge no oral and documentary evidence was let in by the parties. The respondent filed five documents.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and considering the documents filed by the respondent, dismissed the application holding that the petitioner did not object to the said documents and petitioner failed to prove that the petitioner was residing in Chennai from January 2014 and held that the petitioner has not approached the Court with clean hands.

6.Against the said order of dismissal made in I.A.No.327 of 2016 passed by the learned III Additional District Judge, Tiruchirappalli, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel for the petitioner submitted that the petitioner was not served with suit summons and only by paper publication, summons were issued and which has only Local Circulation and petitioner did not know about the same as he was residing at Chennai. The respondent ought to have taken summons to Chennai address as respondent was aware of Chennai address of the petitioner. The learned Judge failed to see that when summons were not served on the petitioner, the time to file an application to set aside the ex-parte decree is from the date of knowledge only and not from the date of ex-parte decree. The learned Judge ought to have liberally considered the application for condone delay.

8.The learned counsel appearing for the caveator/respondent submitted that the petitioner was not residing at Chennai from January, 2014 and he was residing only at Trichy where suit summons were sent. The respondent has proved by documentary evidence that petitioner is residing only at Trichy in the address given in the plaint. The petitioner has not approached the Court with clean hands. The learned Judge has rightly dismissed the application and prayed for dismissal of the Civil Revision

9.I have heard the learned counsel appearing for the



petitioner and the learned counsel appearing for the caveator/respondent.

10.From the materials on record, it is seen that the reason given by the petitioner to condone the delay that he was residing at Chennai from January 2014. First document filed by the respondent is copy of the plaint in O.S.No.1255 of 2014 filed by the petitioner. The petitioner has signed in the said plaint on 17.09.2014 at Trichy. In the plaint, the petitioner has given the same Trichy address as given in the plaint filed by the respondent in the present suit. The other documents are Xerox copies. The learned Judge considered all those documents as petitioner did not object to the same and did not state that those documents are not in his possession. From these documents, the learned Judge has held that the petitioner was residing only in the address given in the plaint filed in the present suit as given by the respondent and has not approached with clean hands. The order passed by the learned Judge after considering all the materials on record in proper perspective. There is no illegality or irregularity warranting interference by this Court.

11.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To
The III Additional District Judge,
Tiruchirappalli.
Copy to : The Section Officer,
V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.VR.SHANMUGANATHAN Advocate in SR. No.35

+1cc to M/s.V.SINGAN Advocate in SR. No.7315

AM

JS/MR/22.02.2017/3P-5C

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