



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2637 of 2016 (NPD)
and
C.M.P(MD)No.12394 of 2016

Navanidhi

..Petitioner/ Petitioner/ Defendant

Vs.

Sudarsan

..Respondent/ Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the order, dated 21.07.2016 passed in I.A.No.622 of 2015 in O.S.No.298 of 2011, on the file of the Subordinate Judge, Tuticorin, by allowing this Civil Revision Petition.

For Petitioner : Mr. S.Subbiah
For Respondent : Mr. B.Rajesh Saravanan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order, dated 21.07.2016 passed in I.A.No.622 of 2015 in O.S.No.298 of 2011 by the learned Sub Judge, Tuticorin.

2.The petitioner is the defendant. The respondent is the plaintiff in the suit O.S.No.298 of 2011 on the file of Sub Court, Tuticorin. The respondent filed suit for recovery of money. The petitioner entered appearance through Advocate but did not file written statement and remained ex-parte and ex-parte decree was passed on 24.10.2013. The petitioner filed I.A.No.622 of 2015 to condone the delay of 1565 days in filing the application to set aside the ex-parte decree and I.A.No.623 of 2015 to set aside the ex-parte decree. The petitioner has stated in the affidavit that after engaging an Advocate, her Advocate informed her, he will inform about the case when she has to come to the Court. She did not receive any information from her Advocate. The petitioner received notice in the E.P.No.37 of 2014, dated 21.02.2015 issued by the Advocate of the respondent. She came to know about the ex-parte decree, only on receiving notice in the E.P., from the Advocate of the respondent. Immediately, she has contacted her Advocate, but he informed that he prepared an affidavit to file an application to set aside the ex-parte decree. Again in the month of April 2015 when she contacted her Advocate, he gave evasive reply. Therefore, she



engaged another Advocate and on verification, she came to know that her previous Advocate did not file any application to set aside the ex-parte decree. Immediately, she filed the present petition. To show her bonafide, the petitioner filed written statement along with present I.A.

3.The respondent filed counter and submitted that the reason given by the petitioner is not valid and sufficient. The petitioner, even after receipt of notice in the E.P., did not immediately file application to set aside the ex-parte decree.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the petitioner even after being given an opportunity did not file written statement.

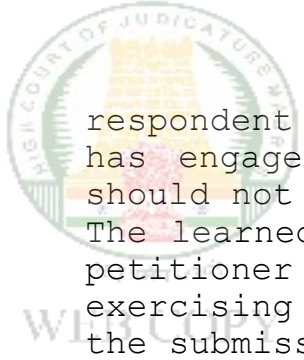
5.Against the said order of dismissal, the petitioner has filed the present Civil Revision petition.

6.The learned counsel for the petitioner submitted that the learned Judge failed to consider the reason given for condoning the delay in filing the petition. On the other hand, he dismissed the application on the ground that the petitioner did not file written statement inspite of number of opportunity given to her. The learned Judge ought to have consider the application for condoning the delay liberally and ought to have given an opportunity to the petitioner to contest the matter on merits. The learned Judge is not correct in numbering both the applications, to set aside the ex-parte and to condone the delay and committed procedural irregularity in dismissing both the applications and the learned Judge ought to have allowed the application for condoning the delay on terms.

7.The learned counsel for the caveator/respondent submitted that the petitioner was aware of the suit proceedings as Attachment Before Judgment was ordered as petitioner failed to furnish security to suit claim. It is the duty of the petitioner to contact her Advocate and diligent enough to put-forth her case. Even after receipt of notice in E.P., in January 2015, the petitioner filed application long after receipt of notice. The intention of the petitioner is only to drag on the proceedings.

8.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the Caveator/respondent also perused the entire materials on record.

9.From the materials, it is seen that the learned Judge dismissed the application in I.A.No.622 of 2015 to condone the delay in filing the application to set aside the ex-parte decree on the ground that the petitioner did not file written statement even after giving ample opportunity to her. From the order, it is seen that the learned Judge has not considered the reason given by the petitioner to condone the delay in filing the petition to set aside the ex-parte decree. The petitioner has stated that her Advocate did not inform about the suit proceedings and did not file application to set aside the ex-parte decree with condone delay petition, in-spite of informing the petitioner, he has prepared the application. The petitioner further stated that her previous counsel gave evasive reply, when enquiry is made. Therefore, she engaged another counsel to file the application to set aside the ex-parte decree. The



respondent has not denied the contention of the petitioner that she has engaged another Advocate and filed an application. The party should not made suffer for the mistake or in-efficiency of Advocate. The learned Judge having failed to consider the reason given by the petitioner to condone the delay, has committed irregularity in not exercising his jurisdiction conferred on him properly. Considering the submission of the learned counsel for the petitioner, this Civil Revision Petition is allowed on payment of costs of Rs.5,000/- to the respondent/plaintiff within a period of three weeks from the date of receipt of a copy of this order.

10.The learned counsel for the petitioner has paid the costs today itself to the counsel appearing for the respondent and the said payment is recorded. Therefore, the Civil Revision Petition is allowed by setting aside the order passed by the Sub Judge, Tuticorin in I.A.No.622 of 2015. Consequently, connected miscellaneous petition is also dismissed.

12.The suit is of the year, 2011, the learned Sub Judge, Tuticorin is directed to dispose the suit as expeditiously as possible, in any event, not later than, 30th April, 2017.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Tuticorin.

2.The Section Officer, V.R.Section Officer,
Madurai Bench of Madras High Court,Madurai.

+1 cc to Mr. B.RAJESH SARAIVANAN,ADVOCATE, SR NO.2110

am

MAS/SV-MMS:31.01.2017:3P/4C

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