



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2657 of 2016 (PD)
and
C.M.P(MD)No.12500 of 2016

Radha

.. Revision Petitioner/Petitioner/
4th Defendant

Vs .

Selvarajan

.. Respondents/Respondents/Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, against the Order passed in I.A.No.1163 of 2015 in O.S.No.570 of 2011, on the file of II Additional Subordinate Court, Trichy, dated 06.09.2016.

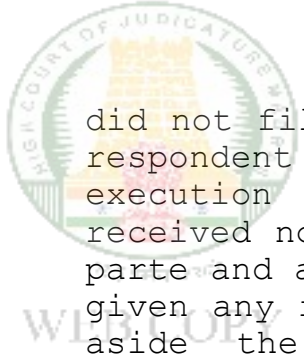
For Petitioner : Mr.C.K.M.Appaji
For Respondent/ : Mr.K.Prabhakar
Caveator

ORDER

This petition has been filed by the petitioner against the Order passed in I.A.No.1163 of 2015 in O.S.No.570 of 2011, on the file of II Additional Subordinate Court, Trichy, dated 06.09.2016.

2.The petitioner is the fourth defendant. The respondent filed suit in O.S.No.570 of 2011 for recovery of money against the petitioner and other defendants. The petitioner and other defendants did not file written statement and therefore, they were set ex-parte and ex-parte decree was passed. The petitioner filed an application to set aside the ex-parte decree with I.A.No.1163 of 2015 to condone the delay of 1350 days in filing the petition to set aside the ex-parte decree. According to the petitioner, after receiving summons, she has engaged an Advocate engaged by her mother, subsequently, she was bed-ridden and suffering from Jaundice and went to her husband's house. Her advocate did not inform about the suit proceedings, therefore, she was set ex-parte and ex-parte decree was passed.

3.The respondent filed counter affidavit and opposed the said application and submitted that the petitioner has not given any reason for the huge delay of 1350 days. The petitioner and other defendants received the suit summons and engaged the Advocate and



did not file written statement. An ex-parte decree was passed. The respondent filed execution petition to execute the decree. In the execution petition also, the petitioner and other defendants received notice and did not file vakalat and they were remained ex-parte and attachment of property was ordered. The petitioner has not given any reason for condoning the huge delay in application to set aside the ex-parte decree and prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the petitioner has not given any valid reason for condoning the delay.

5.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the learned Judge failed to see that the petitioner has given reason for her non-appearance and also for the delay in filing the application to set aside the ex-parte decree. The learned Judge failed to see that the petitioner did not borrow any amount from the respondent and her family was separated and she is not benefitted in any way and prayed for allowing the Civil Revision Petition.

7.The learned counsel for the Caveator/respondent submitted that the petitioner did not file written statement and contest the suit after engaging Advocate and therefore, ex-parte decree was passed. The respondent filed execution petition for attachment of the property. Even in the E.P., after receiving notice, she did not appear and contest the E.P., and therefore, attachment of the property has been ordered. The petitioner has filed an application to set aside the ex-parte decree with petition to condone the delay only to drag-on the proceedings and prevent the respondent from enjoying the fruits of the decree. The petitioner has not given any valid reason for condoning the huge delay.

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

9.From the materials on record, it is seen that it is an admitted fact that the petitioner received the suit summons, subsequently engaged an Advocate and thereafter, she did not file written statement and contest the suit. An ex-parte decree was passed on 13.02.2012. Even in the E.P., the petitioner was set-exparte and attachment of the property was ordered. The reason given by the petitioner that she was bedridden and she was suffering from Jaundice went to her husband's house and her counsel did not inform about the suit are not valid and sufficient reason to condone the delay. The learned Judge considered all the facts in proper perspective and dismissed the application by giving cogent and valid



reason and there is no illegality or irregularity warranting interference by this Court.

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

WEB COPY

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The II Additional Subordinate Judge,
Trichy.

+ 1 CC TO Mr.K.PRABHAKAR, ADVOCATE IN SR No. 641
+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 402

AM
TE/MR-VB : 07/02/2017 : 3P/4C

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