

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

CRP. No.2894 of 2013
and
M.P.No.1 of 2013

Amirthammal ... Petitioner /Petitioner/Defendant

Versus

Rajendran Respondent/Respondent/Plaintiff

Common Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying to set aside the fair and decreetal order dated 09.09.2011 in I.A.No.551 of 2009 in O.S.No.418 of 2007 on the file of Additional District Munsif, Tiruvannamalai.

For Petitioner : Mr. R.Rajarajan

For Respondent : No Appearance

O R D E R

The instant Civil Revision Petition has been filed challenging the order dated 09.09.2011 passed by the Additional District Munsif Court, Tiruvannamalai in I.A.No.551 of 2011 in O.S.No.418 of 2007.

2. The brief facts leading to the filing of the instant Civil Revision Petition are as follows:-

The first respondent filed a suit in O.S.No.418 of 2007 before the Additional District Munsif Court, Tiruvannamalai for recovery of money against the petitioner. The suit for recovery of money was filed based on a promissory note executed by the petitioner in favour of the respondent. The petitioner entered appearance in suit through her counsel who filed his vakalat on her behalf. Since the petitioner did not file the written statement, she was set exparte on 07.12.2007 and thereafter on 30.01.2008 an exparte decree came to be passed against the petitioner for a sum of Rs.75,250/- together with interest and costs.

3. I.A.No.551 of 2009 was filed by the petitioner seeking to condone the delay of 507 days in filing an application to set aside the exparte decree passed in O.S.No.418 of 2007. The

reason given by the petitioner for the said delay is that she is an aged lady and was suffering from jaundice and taking country treatment. A counter was also filed by the respondent in I.A.No.551 of 2009, wherein the respondent has stated that I.A.No.551 of 2009 was filed only to stall the execution of the decree. Even before filing of I.A.No.551 of 2009 by the petitioner, the respondent have already filed the Execution Petition namely R.E.P. No.193 of 2009 for execution of decree dated 30.08.2008.

4. The trial Court by its order dated 09.09.2011 in I.A.No.551 of 2009 in O.S.No.418 of 2007 dismissed the application filed by the petitioner seeking to condone the delay of 507 days in filing the application to set aside the exparte decree.

5. Aggrieved by the order dated 09.09.2011 in I.A.No.551 of 2009 in O.S. No.418 of 2007, the instant revision petition has been filed.

6. Heard Mr.R.Rajarajan learned counsel appearing for the petitioner and there is no representation on the side of the respondent.

Discussion:-

7. This Court has perused the impugned order as well as the affidavit filed by the petitioner in support of I.A.No. 551 of 2009. In her affidavit filed in support of I.A.No.551 of 2009 seeking to condone the delay of 507 days in filing the application to set aside the exparte decree, she has stated that she was suffering from Jaundice and being an aged lady she was unable to contact her advocate for giving him proper instructions in order to defend the suit filed by the respondent. The respondent in his counter has denied the averments contained in the affidavit filed by the petitioner in support of I.A.No.551 of 2009 and has stated that only to drag on the proceedings, I.A.No.551 of 2009 was filed by the petitioner. The respondent has also stated in his counter affidavit that he has already filed an Execution Petition in R.E.P.No.193 of 2009 to execute the decree passed against the petitioner. No supporting evidence was produced by the petitioner in the form of medical certificate to prove that she was suffering from jaundice. Further the petitioner was set exparte for non filing of written statement as early as on 07.12.2007 and only on 30.01.2008, an exparte decree came to be passed against the petitioner. Since the petitioner has not produced any documentary evidence to prove that she was suffering from jaundice and sufficient reasons were also not given in the affidavit, the trial Court dismissed the I.A.No.551 of 2009 seeking to condone the delay of 507 days in filing the application to set aside the exparte decree.

8. This Court has examined the impugned order and does not find any infirmity in the same. This Court is in agreement with the reasons given by the trial Court. In the result, there is no merit in the instant Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dpq

To

The learned Additional District Munsif,
Tiruvannamalai.

+1cc to Mr.G.Rajan, Advocate, S.R.No.78832

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RSV(CO)

rrs 27/12/2018



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