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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.163 of 2018

and

C.M.P(MD)No.2388 of 2018

R.Sornalatha

... Appellant/Petitioner/Defendant

vs.

S.Dharmaraj

... Respondent/Respondent/Plaintiff

Prayer: The appeal filed under Order 43 Rule 1(d) of Civil Procedure Code, to set aside the Ex-order and Fair Order passed in I.A.No.217 of 2017, in O.S.No.103 of 2011, dated 22.09.2017, on the file of the I Additional District Court, Madurai.

For Appellant : Mr.M.Venkatesan

For Respondent : Mr.S.Sukumaran

JUDGMENT

This appeal is filed by the defendant for setting aside the Ex-order and Fair Order passed in I.A.No.217 of 2017 in O.S.No.103 of 2011, dated 22.09.2017 by the I Additional District Judge, Madurai.

2.I have heard the learned counsel appearing for the appellant and the respondent and perused the materials available on record.

3.This appeal is filed by the defendant challenging the order, dated 22.09.2017 made in I.A.No.217 of 2017 in O.S.No.103 of 2011 passed by the I Additional District Court, Madurai. The respondent filed the said suit for recovery of money based on the promissory notes. The appellant filed the written statement and contested the claim of the respondent. The Trial Court framed necessary issues and posted the suit for trial. The Trial Court directed the appellant to commence the trial at first on the ground that she has admitted her signature in the promissory notes. The appellant challenged the said order by filing C.R.P (MD)No.757 of 2016. This Court dismissed the above said Civil Revision Petition. The appellant filed I.A.No.337 of 2016 to examine her husband before herself. The said application was dismissed. The appellant filed another C.R.P.(MD)No.85 of 2017. This Court allowed the said C.R.P., After the order of this Court in C.R.P.(MD)No.85 of 2017, the appellant instead of commencing



the trial examining her husband, filed I.A.No.114 of 2017 for filing the additional written statement. The Trial Court dismissed the said application on 05.06.2017 on the ground that the appellant filed the additional written statement contrary to the earlier written statement seeking to withdraw the entire admission and introduced a new facts and posted the suit for trial on 13.06.2017. The appellant did not commence the trial on the day and according to the appellant she filed application for stay of trial on the ground that she intend to file C.R.P., challenging the order of dismissal by the Trial Court. The said application was returned. The appellant was set ex-parte and the suit was posted for recording ex-parte evidence on 17.06.2017. On 17.06.2017 the applications filed by the appellant for setting aside the ex-parte decree and stay were returned for certain defects. On the day, evidence was recorded and suit was decreed. The appellant filed I.A.No.217 of 2017 to set aside the ex-parte decree. The learned Judge considering the above facts dismissed the application holding that the intention of the appellant is only to drag on the proceedings.

4. The learned counsel for the appellant has reiterated the averments made in I.A.No.217 of 2017 and contended that the ex-parte decree was passed in a hurried manner. The learned counsel for the appellant further contended that without understanding the petition made under Order 9 Rule-13 C.P.C., dismissed the same on 22.09.2017. The learned Judge failed to see that the appellant has given valid reason and ought to have given an opportunity to the appellant to contest the suit on merits.

5. The contentions of the learned counsel for the appellant are without merits. From the impugned order of the Trial Judge, it is seen that from 05.12.2015 when the appellant was directed to commence trial by letting in evidence first, the appellant has dragged on the proceedings by filing the interim applications and Civil Revision Petitions. Even after, this Court permitting the appellant to examine her husband before examining herself, she did not commence the trial. On the other hand, she filed I.A.No.114 of 2017 to file additional written statement. According to the learned Judge, the additional written statement sought to be filed by the appellant for withdrawing the earlier admission made by her in the written statement and to introduce the new facts. The learned Trial Judge has considered all the above facts in proper perspective and has dismissed the application to set aside exparte decree by giving cogent and valid reason.

6. From the impugned order of the learned Judge, it is seen that the intention of the appellant is to drag on the proceedings and has no intention for contesting the suit. There is no reason



7. For the above reasons, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The I Additional District Court,
Madurai.

Copy to:

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

+1 cc TO Mr. M. Venkatesan, ADVOCATE IN SR NO. 92445

am
MK/ES/RSK/SAR 2/27.12.2018/3P/5C

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