



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.07.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P.(MD)No. 364 of 2018
and C.M.P.(MD) No.1640 of 2018

Maragatham

: Petitioner

-Vs-

1. Kannusamy

2. The Assistant Elementary Educational Officer-I,
O/o.Assistant Elementary Educational Officer,
Manaparai Union Panchayat,
Kattupatti, Manaparai, Trichy.

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order, dated 19.09.2017 in E.P. No.140 of 2015 in O.S.No.858 of 2011, on the file of the learned I Additional Subordinate Judge, Tiruchirapalli and allow the same.

For Petitioner : Mr.A. Haja Mohideen

For Respondent-1 : Mr. AN. Ramanathan

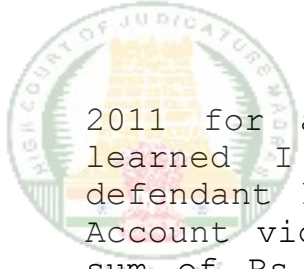
For Respondent-2 : Mr.Aayiram K.Selvakumar
Additional Government Pleader.

ORDER

This Civil Revision Petition is filed to set aside the order, dated 19.09.2017 in E.P. No.140 of 2015 in O.S.No.858 of 2011, on the file of the learned I Additional Subordinate Judge, Tiruchirapalli and allow the same.

2. Mr. Aayiram K.Selvakumar, Additional Government Pleader is appearing for Respondent-2.

3. The revision petitioner is the defendant and the respondent is the plaintiff in a suit in O.S.No.858 of 2011. The respondent herein has filed the above suit for recovery of money before the learned I Additional Subordinate Judge, Tiruchirappalli. Due to non-appearance, the petitioner herein was set exparte and an ex-parte decree was passed. Thereafter, the respondent herein/plaintiff has filed a execution petition in E.P. No.140 of 2015 in O.S.No.858 of



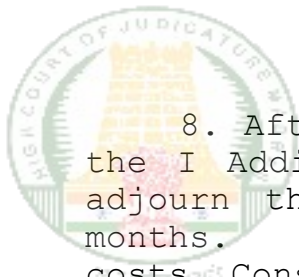
2011 for attachment of salary and the same was allowed by the learned I Additional Subordinate Judge, Tiruchirappalli. The defendant has deposited 50% of the decretal amount in the Court Account vide lodgement receipt No.JB 205 346 dated 05.10.2017 to a sum of Rs.81,000/- (Rupees Eighty One Thousand Only). Thereafter, the defendant has filed an interlocutory application in I.A.No.809 of 2017 to condone the delay of 1570 days in representing the application to set aside the exparte decree.

4. It is the case of the revision petitioner is that after passing an order in E.P. No.140 of 2015, the petitioner has filed an application in E.A.No.254 of 2017 in E.P. No.140 of 2015 seeking interim stay of the order of the attachment of the salary. On 19.09.2017, for entertaining the said application, the executing Court has directed the petitioner to deposit 50% of the decretal amount. Therefore, the petitioner has deposited a sum of Rs.81,000/- (Rupees Eighty One Thousand Only) to the credit of E.P. No.140 of 2015 and the said amount is lying on the Court deposit as on date.

5. The learned counsel for the respondent has also admitted that the said amount of Rs.81,000/- (Rupees Eighty One Thousand Only) was deposited in to the Court. Apart from this, it is the case of the revision petitioner that challenging the exparte decree in O.S.No.858 of 2011, the petitioner has filed a set aside application along with condone delay application in I.A.No.809 of 2017 and the same is pending before the learned I Additional Subordinate Judge, Tiruchirappalli. Therefore, this Court is of the view that, in the interest of justice, this Civil Revision Petition is allowed.

6. In the result, this Civil Revision Petition is allowed, setting aside the order, dated 19.09.2017 made in E.P. No.140 of 2015 in O.S.No.858 of 2011, on the file of the I Additional Subordinate Judge, Tiruchirappalli. The respondent is given liberty to withdraw a sum of Rs.81,000/- (Rupees Eighty One Thousand Only) lying in the credit of E.P. No.140 of 2015 in O.S.No.858 of 2011, on proper application being filed by the respondent in E.P. No.140 of 2015, the Execution Court is directed to permit him to withdraw the said amount.

7. Post the matter after three months. In the meantime, the petitioner is directed to proceed with the set aside the application along with condone delay application in I.A. No.809 of 2017 and the I Additional Subordinate Judge, Tiruchirappalli is directed to consider the I.A.No.809 of 2017 and to pass an order after giving notice to both parties, within a period of four weeks and proceed the application on its merits.



8. After permitting the respondent to withdraw the said amount, the I Additional Subordinate Judge, Tiruchirapalli is directed to adjourn the E.P.No.140 of 2015 in O.S.No.858 of 2011 for three months. Thereafter to proceed with the E.P.No.140 of 2015. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The I Additional Subordinate Judge,
Tiruchirappalli.

+1CC to Mr.A. Haja Mohideen, Advocate, SR.No.73455
+1CC to Mr. AN. Ramanathan, Advocate, SR.No.73357

C.R.P. (MD) No.364 of 2018
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