



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.2348 of 2018

and

C.M.P. (MD) No.10416 of 2018

M.Umayaraj

... Petitioner

/Vs./

R.Ramasamy

... Respondent

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.07.2018 made in I.A.No.249 of 2018 in O.S.No.62 of 2014 on the file of the Subordinate Court, Kovilpatti.

For Petitioner : Mr.R.Devaraj

#### ORDER

O.S.No.62 of 2014 on the file of the Sub Court, Kovilpatti was filed by the respondent herein for recovery of money for a sum of Rs.2,25,000/- from the revision petitioner herein. It is a suit on mortgage. The case of the plaintiff is that the revision petitioner had earlier executed two deeds of mortgage in favour of one Papanasam and his wife Rajammal and that they had made over the same in his favour. The revision petitioner filed a written statement taking the stand that he had borrowed only a sum of Rs.50,000/- each from the said Papanasam and Rajammal and that the document was written for double the amount. He had also further pleaded that on 30.06.2013, he had returned the amount of Rs.1,00,000/- borrowed from the said couple. The issues were framed and the trial has also concluded. The matter was posted for arguments. At that stage, the revision petitioner filed I.A.No.249 of 2018 for reopening his side. The Court below, by order impugned in this civil revision petition dismissed the said IA. Challenging the same, this civil revision petition has been filed.

2. The learned counsel appearing for the revision petitioner reiterated all the contentions raised in the memorandum of grounds.

3. He would pointedly contend that the matter was posted for his side evidence on 19.04.2018 and that he was given hardly four



months time to prove his defence. He would also contend that there are certain practical difficulties and that he wanted to examine the original mortgagees, who had made over the mortgages in question in favour of the plaintiff.

4. I am unable to agree with the said submission of the learned counsel appearing for the revision petitioner.

5. The suit is of the year 2014. The mortgages were admittedly executed by the revision petitioner in December 2011. The revision petitioner was set exparte on two occasions. On both occasions, the Court below showed indulgence and rendered substantial justice and set aside the orders setting him exparte and allowed him to contest the suit on merits. Even though the suit is of the year 2014, the matter was posed for trial only on 19.04.2018 to enable the revision petitioner to adduce evidence. The written statement was filed in February 2015. The revision petitioner ought to have been ready to let in evidence the moment when his side was opened. Admittedly, the defence side was kept open for full four months. There was enough and more time to adduce evidence in his defence. The revision petitioner had not chosen to avail the opportunity granted to him. Therefore, the Court below was left with no other option but to close his side and post the matter for arguments.

6. I fully concur with the findings of the Court below that the revision petitioner is bent on dragging the proceedings. This Court went through the contents of the written statement filed by the revision petitioner herein. In paragraph No.1 of the written statement, the revision petitioner had claimed that he had discharged the mortgage by paying a sum of RS.1,00,000/- to the said Papanasam and Rajammal on 30.06.2013. But then, in the very same paragraph, the revision petitioner would admit that he had not obtained any receipt from the said mortgagees. Therefore, this Court is not able to believe that he had cleared the mortgage dues. No acceptable material has been placed before me to come to the rescue of the revision petitioner.

7. Concurring with the reasons assigned by the Court below for dismissing IA in question, the order impugned in this civil revision petition is sustained. Accordingly, this civil revision petition is dismissed.

8. At this stage, the learned counsel appearing for the revision petitioner pointed out that the findings rendered in this civil revision petition would virtually destroy his defence. It is made clear that the dismissal of the civil revision petition will not cast any shadow on the merits of the matter. The learned trial judge is mandated to decide the suit based on the materials available on record. The order passed in this civil revision



petition will in no way prejudice the defence of the revision petitioner. No costs. Consequently, connected Miscellaneous petition is dismissed.

Sd/-  
Assistant Registrar(CS-I)  
/True Copy/

**Sub Assistant Registrar(CS-II)**

To

The Subordinate Judge, Kovilpatti.

• 1 CC TO Mr.R.DEVARAJ , ADVOCATE IN SR No. 91437.

SM

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Order made in  
C.R.P. (MD) (PD) No.2348 of 2018

23.10.2018