



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.02.2018

DELIVERED ON : 28.04.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P.(PD)(MD)No.1604 of 2017
and
C.M.P.(MD)No.9082 of 2017

Rajendran : Petitioner / Petitioner / 1st Defendant

vs.

Vasudevan : Respondent / Respondent / Plaintiff

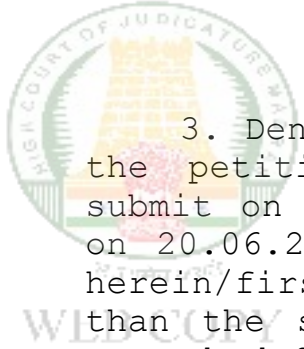
PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order in I.A.No.367 of 2016 in O.S.No.123 of 2009 dated 13.07.2017 on the file of the Sub Court, Kumbakonam.

For Petitioner : Mr.R.Rajaraman
For Respondent : Mr.S.Balaraman

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the learned Subordinate Judge, Kumbakonam in I.A.No.367 of 2016 in O.S.No.123 of 2009 dated 13.07.2017.

2. The suit in O.S.No.123 of 2009 was filed by the respondent herein/plaintiff, who is the brother of the petitioner/1st defendant, seeking a direction to the defendants therein to pay a sum of Rs.2,49,066.72/- with 18% interest. According to the petitioner, during 2009, due to some misunderstanding with his family, he has shifted his residence from Perambur to the respondent's/plaintiff's house at Maruthanallur and taking advantage of the above, the respondent filed a suit against him and obtained an ex-parte order by sending the suit notice to his previous address. The petitioner was set ex-parte on 08.03.2010. As soon as he came to know about the same, he has filed a condone delay petition, which was erroneously dismissed by the Court below and therefore, he seeks interference by this Court. The petitioner, to substantiate his claim, has produced a copy of the family card before the Court below to show that at the relevant point of time, he was living with his brother, however, the learned Judge did not consider the same while passing the above



3. Denying the allegations levelled by the learned Counsel for the petitioner, the learned Counsel for the respondent would submit on 08.03.2010, the petitioner herein was set *ex-parte* and on 20.06.2013, *ex-parte* decree was passed against the petitioner herein/first defendant and the second defendant, who is none other than the son of the petitioner/first defendant. Thereafter, the second defendant alone challenged the said *ex-parte*, which was allowed and again the second defendant had allowed it set *ex-parte* on 15.07.2015 and again, a petition challenging the *ex-parte* decree was filed and the same was allowed on terms and the suit is, now, at the stage of cross examination. Suppressing these facts, the present interlocutory application was filed. Moreover, without challenging the *ex-parte* decree dated 20.06.2013, the present interlocutory application was filed challenging the *ex-parte* order dated 08.03.2010 and too, not within the period of limitation.

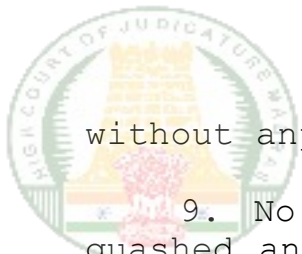
4. Countering the same, the learned Counsel for the petitioner/1st defendant would submit that the second defendant has already challenged the *ex-parte* decree and the same was ordered. Therefore, it is sufficient for the petitioner to challenge the *ex-parte* order alone.

5. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

6. The only point to be decided in this civil revision petition is whether the petitioner is right in filing the above application challenging the *ex-parte* order dated 08.03.2010, instead of challenging the *ex-parte* decree dated 20.06.2013.

7. Perusal of records show that the petitioner and his son/the second defendant had jointly obtained loan from the plaintiff, which is the cause of action for the suit. It is seen that the *ex-parte* decree dated 20.06.2013 was challenged by the second defendant and the same was allowed and again the second defendant has left the suit to set *ex-parte*, which was also challenged and the same was later allowed on terms. In other words, according to the petitioner, as on date, the *ex-parte* decree was quashed based on the application of the second defendant and therefore, it is enough for him to challenge the *ex-parte* order dated 08.03.2010 alone.

8. It is also seen that during cross examination of the petitioner, it was admitted that both the petitioner/1st defendant as well as his son/2nd defendant are residing together in a common house. The 2nd defendant alone has challenged the *ex-parte* twice and when the case is adjourned for cross examining the plaintiff, the petitioner, having known all these things, has filed the petition belatedly i.e., nearly after six years and that too,



without any convincing reasons.

9. No doubt, the *ex-parte* against the second defendant was quashed and the suit was restored twice. As far as the petitioner is concerned, the *ex-parte* decree still holds good against him and unless and until, the same is questioned, the petitioner cannot challenge the *ex-parte* order dated 08.03.2010. This Court is of the view that the petitioner/first defendant and the second defendant, i.e., the father and son, having been colluded with each other, in order to defeat the rights of the respondent/plaintiff, have filed the set aside petitions alternatively, which is only an abuse of process of the Court.

10. There is no infirmity in the order passed by the court below and this civil revision petition is liable to be dismissed and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Kumbakonam.

Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.R.RAJARAMAN, Advocate, SR.No.64676
+1cc to Mr.B.JAMEEL ARASU, Advocate, SR.No. 64553

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