



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No. 2262 of 2017

and

CMP (MD) No. 10997 of 2017

Sheik Dawood ... Petitioner/Petitioner/9th Defendant

-vs-

Lena Finance Partners,

1. Alagappa Chettiar

2. L.P. Veeranan Sanmugavalli

3. L.P. Valliammai Achi

4. Theivanai ... Respondents 1 to 4 / Respondents 1 to 4 /
Plaintiffs

(All are represented by Power Agent L.P. Lakshmanan)

5. Kannammai Achi

6. R.M. Subbaiah

7. R.M. Kandasamy

8. R.M. Sanmugam

9. S. Chandrasekaran

10. Muthunayagam

11. A.R. Saravanan

12. Sundaram Theat ... Respondents 5 to 12 / Respondent 5 to 12
/ Defendants 1 to 8

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.08.2016 made in I.A.No.585 of 2014 in O.S.No.242 of 2002 on the file of the learned 1st Additional Sub Court, Madurai.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.P.T.S.Narendravasan (for R1 to R4)
<https://hcservices.ecourts.gov.in/hcservices/>
R5 to R12 - Given up

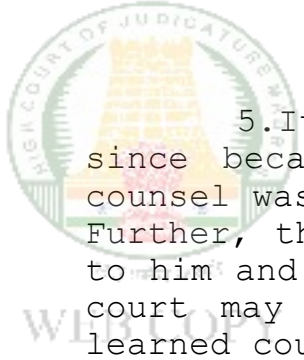
**ORDER**

The relief sought for in the instant Revision Petition is to set aside the fair and decreetal order dated 04.08.2016 passed in I.A.No.585 of 2014 in O.S.No.242 of 2002 on the file of the learned 1st Additional Sub-Judge, Madurai.

2.It is the case of the revision petitioner that he is the 9th defendant in the original suit and he was impleaded in the said suit as per the order passed in I.A.No.585 of 2005 dated 14.12.2005. The said suit was filed by the Respondents/Defendants to recover the money, a sum of Rs.4,18,632.65/- based on the chit transaction. However, on 08.03.2006 an exparte decree was passed as against all the defendants. Further, on the date of the exparte order the revision petitioner was in Saudi Arabia and on his behalf an Advocate namely Mr.Venkatesan was instructed to appear. However, the said Advocate Mr.Venkatesan was died and the fact of the death of the advocate came to the notice of then revision petitioner belatedly. Further, when the revision petitioner came down to India, he noticed that an Execution Petition in E.P.No.205 of 2006 was filed and in the said Execution Petition an order of attachment was also passed. However, the learned counsel for the revision petitioner brought to the notice of this court that the 3rd defendant filed an application to condone delay in filing the application to set-aside the exparte decree. The said interim application in I.A.No.333 of 2007 was allowed by the learned Trial Court. However, against the order passed in the aforesaid I.A.No.333 of 2007, a revision petition was preferred before this Hon'ble Court but the same was dismissed. So, the benefit of the order passed by this Hon'ble Court in favour of the 3rd defendant may be extended to the revision petitioner also.

3.Per contra, the learned counsel for the respondent would submit the revision petitioner was originally represented through his power agent namely one Mushtafa and during that time an ex-parte decree was passed. Further, it is the contention of the learned counsel for the respondent that pursuance to the ex-parte decree dated 08.03.2006 Execution Petition was filed in E.P.No.205 of 2006 and an order of attachment was passed therein. Apart from that after a period of 7 years of the filing of Execution Petition, the revision petitioner filed the instant petition. It is also brought to the notice of this court that the revision petitioner not only appeared in the Execution Petition proceedings but he also filed his counter therein. At the same time, intentionally he did not file the petition to set-aside the exparte order immediately even after his appearance in the execution proceedings. Hence, the learned counsel for the respondent prays for the dismissal of the Civil Revision Petition.

4.I heard Mr.M.Ajmal Khan, learned senior counsel for M/s.Ajmal Associates appearing for the petitioner and Mr.P.P.S.Narendravasan, learned counsel for the respondents 1 to 4 and the materials available on record are perused.

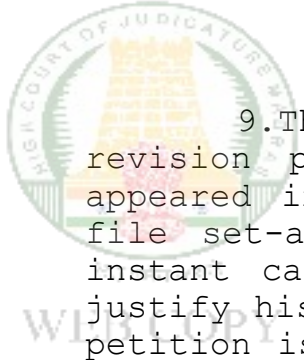


5. It is the specific case of the revision petitioner that since because the revision petitioner was not in India and his counsel was also died, he was unable to pursue the case proceedings. Further, the benefit given to the 3rd defendant may also be extended to him and in the petition for setting aside the exparte order, the court may show some leniency. In support of his contention, the learned counsel for the revision petitioner has relied on a Judgment reported in 2009 (1) MLJ 81 S.C.

6. However, it is seen from the records and it is also not disputed by the revision petitioner that the petition to set-aside the ex-parte order was filed nearly after 7 years of the initiation of the executing proceeding. Further, the revision petitioner has also made his appearance in the execution proceedings, but no petition was filed challenging the ex-parte decree immediately after his appearance in the execution proceedings. Apart from that absolutely no reasons are adduced on the side of the revision petitioner as to why the petition to set-aside the exparte decree was filed even though the revision petitioner entered his appearance in the execution proceeding some 7 years prior to the filing of the set-aside application. The learned counsel for the respondent has relied on the judgment in C.R.P.(PD)No.4082 of 2013 dated 19.12.2014, wherein it is held that the application to set-aside the ex-parte order ought to have been filed within a period of three years though no specific period of limitation is prescribed.

7. The learned counsel for the respondent would contend that it is the admitted fact that the application to set-aside the ex-parte order is filed after a period of 7 years. Though no limitation is prescribed for filing the petition to set-aside the ex-parte order, as per the contention of the learned counsel for the respondent that such application cannot be filed after a lapse of 3 years. It is brought to the notice of this Court that Article 137 of Limitation Act, 1963 would be applicable in such circumstances and no application can be filed after the lapse of 3 years from the date of passing of ex-parte order.

8. For the appreciation, Article 137 is re-produced here under "any other application for which no period of limitation is prescribed provided elsewhere in this division - the period of limitation is prescribed for 3 years when the right to apply accrues. Further, it is also contended that the revision petitioner cannot say that he has no knowledge about the exparte decree. Because he has actively participated in the Execution Proceedings for which the revision petitioner has no explanation. So, he cannot claim the yardstick applied to the 3rd defendant to his case. Further, the decisions relied on by the revision petitioner is no way helpful to improve his case as the same is dealing with under Order 9, Rule 13 C.P.C. But, the present application filed by the revision petitioner is under order 9, rule 7 C.P.C, to set aside the ex-parte order.



9. Therefore, this Court has no hesitation to hold that the revision petitioner is not entitled for any leniency. Once he appeared in the execution proceedings, it is his bounden duty to file set-aside petition forthwith without any delay, but in the instant case, the revision petitioner has not stated anything to justify his inordinate delay of nearly 7 years. Hence, the revision petition is failed and accordingly the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To
The 1st Additional Sub Court,
Madurai.

+1cc to Mr.P.T.S.Narendravasan, Advocate, SR.No.70841.
+1cc to M/s.Ajmal Associates, Advocate, SR.No.71247

order made in
C.R.P. (MD) (PD) No.2262 of 2017
and
CMP (MD) No.10997 of 2017
03.07.2018

vsv

RAM/RSK/SAR 2/13.07.2018/4P/4C