



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.09.2018
CORAM :
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN
C.R.P. (MD) Nos. 1911 and 2196 of 2016

WEB COPY

In C.R.P. (MD) .No.1911 of 2016:

M.Arul Kantha Raj .. Petitioner/3rd Respondent/
3rd Defendant

vs.

1. Tamil nadu Mercantile Bank Limited,
Kovilpatti Branch through its Branch Manager,
Kovilpatti, Door No.794, Main Road,
Tuticorin District- 628 501.
.. Respondent/Appellant/Plaintiff

2. V.Dhanalakshmi .. Respondent/Respondent/
2nd Defendant

3. S.Jebakumar Dhanis (died) .. Respondent/Respondent/
Defendant

(2nd respondent is recorded as the legal heir
of the deceased 3rd respondent as per order in
Memo dated 16.11.2011 and amended as per
order in I.A.No.39 of 2012 dated 06.12.2012)

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, to set aside the return dated 18.04.2016 in
(unnumbered) I.A.SR.No.1248 of 2016 in A.S.No.4 of 2014 on the file
of the II-Additional District Court at Tuticorin (A.S.No.23 of 2009
on the file of the Principal District Court, Thoothukudi) in
O.S.No.41 of 2007 on the file of the Sub Court, Kovilpatti within a
time stipulated by this Court.

In C.R.P. (MD) .No.2196 of 2016:

M.Arul Kantha Raj .. Petitioner/Petitioner/
Respondent/ 3rd Defendant

vs.

1. Tamil Nadu Mercantile Bank Limited,
Kovilpatti Branch through its Branch Manager,
Kovilpatti, Door No.794, Main Road,
Tuticorin District- 628 501.
.. Respondent/Respondent/
Appellant/Plaintiff

2. V.Dhanalakshmi .. Respondent/Respondent/
Respondent/ 2nd Defendant



3.S.Jebakumar Dhanis (died)

.. Respondent/Respondent/
Respondent/Defendant

(2nd respondent is recorded as the legal heir of the deceased 3rd respondent as per order in Memo dated 16.11.2011 and amended as per order in I.A.No.39 of 2012 dated 06.12.2012)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the return dated 18.04.2016 in unnumbered I.A.SR.No.1249 of 2016 in A.S.No.4 of 2014 on the file of the II-Additional District Court at Tuticorin (A.S.No.23 of 2009 on the file of the Principal District Court, Thoothukudi) in O.S.No.41 of 2007 on the file of the Sub Court, Kovilpatti within a time stipulated by this Court.

In both Petitions:

For Petitioner : Mr.D.Selvanayagam

For Respondent No.1 : Mr.N.Dilipkumar

Respondent No.2 : Tapal not yet returned

Respondent No.3 : died

COMMON ORDER

The revision petitioner was the third defendant in O.S.No.41 of 2007 on the file of the Sub Court, Kovilpatti. It is a money suit instituted by the first respondent Bank against the respondents 2 & 3 herein and also the revision petitioner. The suit was partly decreed insofar as the private respondent herein was concerned, and totally dismissed as far as the revision petitioner is concerned. Questioning the same, the Bank filed A.S.No.4 of 2014. The revision petitioner after initially entering appearance in the appeal, later remained exparte. The first Appellate Court passed order on merits against all the three defendants including the revision petitioner herein. The appeal was allowed in toto. The revision petitioner thereafter applied for re-hearing the appeal. The Court below took the view that since the first appeal was disposed of on merits, an application under Order 41 Rule 21 of CPC will not lie. Therefore, the said IA was not even numbered. It was returned. There was a delay of 764 days in filing such re-hearing application. The condone delay application also returned. Challenging the same, these Civil Revision Petitions have been filed.

2. This Court is of the view that though the first Appellate Court disposed of the appeal on merits, the fact remains that the revision petitioner remained exparte in the appeal. Therefore, the revision petitioner would be entitled to file an application for re-hearing. But then such an application will have to be filed within 30 days. But in this case, there was a delay of 764 days in filing such a re-hearing application.



3. Therefore, the Court below shall number the condone delay petition and dispose of the same on merits and in accordance with law after hearing the learned counsel for the revision petitioner. This Court makes it clear that it has not expressed any opinion on the merits of the condone delay petition. It has to be independently dealt with. It is also seen that the decree obtained is divisible in nature. It is because the revision petitioner is the guarantor. Therefore, the decree obtained by the Bank against the respondents 2 and 3 herein can very well be executed. The pendency of re-hearing application or condone delay application, on the instance of the revision petitioner shall not act as the impediment for executing the decree obtained by the Bank against the main borrowers. The orders returning I.A.SR.Nos.1248 and 1249 of 2016 filed by the revision petitioner before the first Appellate Court is set aside.

4. The Registry shall return the original unnumbered I.A.SR.1248 of 2016 to the learned counsel for the petitioner for re-presentation before the Court below.

5. It is seen that the revision petitioner filed three IAs one for setting aside the appeal decree, the other for re-hearing and the third one for condoning the delay. This Court is of the view that two IAs are sufficient. The Court below shall take up I.A.SR.No.1248 of 2016 filed for condoning the delay in filing the re-hearing application. Based on the outcome of the said condone delay application, the Court below can take a decision on the other IA filed for re-hearing the appeal. The application for setting aside the appeal decree does not arise at all.

6. With these observations, both the Civil Revision Petitions are allowed. No Costs. The Court below shall complete the said exercise of re-hearing the application on question within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Principal District Judge, Thoothukudi

2.The II-Additional District Judge,
Tuticorin.



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

+1cc to Mr.N.Dilipkumar, Advocate Sr.No.86484
+2cc to Mr.D.Selvanayagam, Advocate Sr.No.86204

PJL

KM/SV/SAR2/12.12.2018/4P/8C

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