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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.08.2018
CORAM
THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.(NPD)(MD)No.2103 of 2016
and C.M.P.(MD).No.9829 of 2016

M.Chellathurai ... Petitioner/Petitioner/Defendant

/Vs./

V.Azhappa Pillai ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No.8 of 2016 in O.S.No.37 of 2011 on the file of the Subordinate Judge, Padmanabhapuram, dated 13.08.2016.

For Petitioner : Mr.C.Sankar Prakash
For Respondent : Mr.V.M.Bala Mohan Thampi

O R D E R

The revision petitioner is the defendant in O.S.NO.37 of 2011 on the file of the Sub Court, Padmanabhapuram. It is a suit for recovery of a sum of Rs.5,92,000/- from the revision petitioner. The suit was laid on the strength of a promisery note. The revision petitioner filed his written statement as early as on 18.08.2011. Thereafter trial commenced. The plaintiff examined himself as P.W.1. Without cross examining the plaintiff, the revision petitioner allowed the suit to be decreed ex-parte. The court below passed a detailed ex-parte judgment on 08.04.2014. Thereafter, to enforce the same, E.P.No.18 of 2015 was filed. After filing a counter in the Execution Petition, the revision petitioner filed a petition under Order 9 Rule 13 C.P.C to set aside the ex-parte judgment but there was a delay in filing the same. To condone the same, I.A.No.8 of 2016 was filed. The court below dismissed the said Interlocutory Application by order dated 13.08.2016. The correctness of the said order is questioned in this Civil Revision Petition.

2. Heard the submissions made on either side.

3.The learned counsel for the revision petition reiterated the grounds set out in the memorandum and called upon this Court to give one more opportunity to the revision to contest the suit. He placed reliance on the decision reported in **2011 (3) CTC 168** (In **Meenakshisundaram Textiles Vs. Valliammal Textiles**)

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4. I am unable to agree with the said submission of the learned counsel for the revision petitioner. In this case, it is not as if the revision petitioner was not aware of the institution of the suit against him. He was served with the suit summons and he entered appearance through counsel and also filed his written statement. This was as early as in August 2011. The decree came to be passed only on 08.04.2014. The revision petitioner therefore cannot plead ignorance. He did not file the set aside application in time. Only after he received notice in the Execution Petition, he woke up.

5. This Court went through the affidavit filed in support of the condone delay petition. The reasons set out in the said affidavit are neither sufficient nor convincing. The delay is also inordinate. The court below was therefore justified in coming to the conclusion that the defendant has deliberately dragged on the proceedings. This Court went through the ex-parte judgment passed by the court below. It is seen that it is not a cryptic one. It sets out the cause of the plaintiff and also the stand taken by the defendant. Thereafter, it proceeds to consider the evidence adduced by the plaintiff. Only then it passed the judgment and decree in favour of the plaintiff.

6. In these circumstances, this Court is of the view that no case is made out for interference with the impugned order. There is no merit in the Civil Revision Petition. It stands dismissed. No costs. Consequently, connected C.M.P.(MD) No.9829 of 2018 is closed. However, it is needless to mention that the revision petitioner would have liberty to file a regular first appeal questioning the said judgment and decree.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1.The Subordinate Judge,
Padmanabhapuram.

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

+1cc to Mr.C.Sankar Prakash, Advocate SR.No.79781
+1cc to Mr.V.M.Bala Mohan Thampi, Advocate SR.No.80020
Cm
MK/SV/SAR 4/11.09.2018/2P/6C

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