



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.01.2018
PRONOUNCED ON : 25.09.2018
CORAM
THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

WEB COPY

C.R.P.(MD) No.602 of 2011
and M.P.(MD) No.1 of 2011

1.S.Thangaraj
2.Kannidevi

...Petitioners

Vs.

P.Sundar

...Respondent

PRAYER: Civil Revision Petition filed the under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No.470 of 2010 in O.S.No.38 of 2009 by the Sub-Court, Thoothukudi dated 07.02.2011.

For Petitioner : Mr.D.Venkatash

For Respondents : Mr.R.Vijayakumar

ORDER

The Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.470 of 2010 in O.S.No.38 of 2009 by the Sub-Court, Thoothukudi, dated 07.02.2011.

2. I.A.470 of 2010 has been filed by the Revision Petitioner under Section 5 of the Limitation Act, to condone the delay of 230 days in filing the petition to set aside the ex-parte decree. The relief sought in the suit is for recovery of money on pro-note and the said suit was decreed on 12.10.2009. The reason stated by the petitioner herein for the delay is that he was not well and he came to know about the decree only after the receipt of the notice in the execution petition. The Trial Court, after verifying the facts and reasons stated before it, found that the petitioner has not filed any documentary evidence to prove his illness and other reasons stated for the delay. The reasons stated by the petitioner were not accepted and the petition was dismissed, against which the petitioner has filed this Civil Revision Petition.

3. The arguments of the petitioner is that he was suffering from jaundice, for which he could not file any medical report and the delay has to be condoned.



4. It is argued by the respondent that the counsel entered appearance in the Execution petition and he sought for adjournment for filing counter. After seeking adjournments for filing counter in the execution petition, the respondent filed the petition to set aside the ex-parte decree and to condone the delay of 230 days in filing the petition to set aside the exparte decree. It is observed that when the petitioner herein had knowledge about the execution petition and made appearance and sought for adjournments and only after that he has filed application to set aside the exparte decree and the reasons stated by him were not considered by the trial Court.

5. At the time of admitting the above CRP, this Court has passed a conditional order in MP (MD) No.1 of 2011 stating that ''there shall be an order of interim stay on condition that the petitioner/ the judgment debtor shall deposit a sum of Rs.1,00,000/- into the credit of E.P.No.4 of 2010 in O.S.No.38 of 2008' on the file of Sub Court, Thoothukudi within four weeks, failing which, interim stay shall stand vacated without further reference to this court''.

6. This Court, by an order dated 19.03.2018, called for a report as to the compliance of the order dated 11.7.2011 from the learned Subordinate Judge, Tuticorin, regarding the status of E.P.No.4 of 2010 in O.S.No.38 of 2008.

7. The learned Subordinate Judge, Tuticorin has sent a report dated 24.03.2009 stating that the order passed by this Court in M.P(MD) No.1 of 2011 was not complied with by the petitioners and pro order has been effected, pursuant to which, E.P.No.4 of 2010 was closed on 18.1.2012.

8. Since the petitioners have not complied with the conditional order passed in MP (MD) No.1 of 2011, the stay got automatically vacated. In view of the same, this Court is of the view that there is no merit in allowing this Petition . Hence the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (T&P)

/ True Copy /

Sub Assistant Registrar (CS)



To

The Subordinate Judge,
Sub-Court,
Thoothukudi

+1CC to Mr.R.VIJAYAKUMAR, Advocate, SR.No.86591

msr

C.R.P. (MD) No.602 of 2011 (NPD)

and

M.P. (MD) No.1 of 2011

25.09.2018

ES/03.06.2019/3P/3C