

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE MS. JUSTICE N.SATHISHKUMAR

C.R.P.No.552 of 2009

and

C.M.P.No.1 of 2009

S.Ananandavadivelou

...Petitioner

Vs

1.S.Balasubramanian

2.Tmt.A.Ramani

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying that the order and decreetal order in I.A.No.230 of 2007 in I.A.No.129 of 2006 in O.S.No.27 of 2005 on the file of the Principal District Judge, Puducherry dated 23.12.2008 is unjust, illegal and in any event liable to be set aside.

For Petitioner : Mr.V.Lakshmi Narayanan

For Respondents : Mr.T.S.Baskaran for R1.

O R D E R

This Civil Revision Petition has been filed as against the order of the trial Court dismissing the application in I.A.No.230 of 2007 filed under Order IX Rule 13 of Civil Procedure Code to restore the application in I.A.No.129 of 2006 to set aside the exparte decree which was passed on 25.01.2006.

2.The brief facts leading to file this revision are as follows:

The suit has been laid against the defendants who are husband and wife on the basis of certain promissory notes executed by both of them jointly and individually and the suit has been filed for the recovery of the sum of Rs.8,70,982/-. It appears that for non-filing of the written statement, the defendants were set exparte and the suit has been decreed on 25.01.2006.

3. To set aside the exparte decree, the revision petitioner/1st defendant has taken out an application in I.A.No.129 of 2006. Pending enquiry for several hearings, the above application was dismissed for default on 31.08.2007. To restore the above application, an application in I.A.No.230 of 2007 was filed by the revision petitioner/1st defendant. The trial Court has dismissed the above application on the ground that no reason has been assigned by the revision petitioner for the pending of the said application for several hearings. Challenging the same, the present revision is filed.

4.The learned Counsel appearing for the revision petitioner submitted that the application to restore the I.A.No.129 of 2006 was filed within stipulated time. Further, he has also filed written statement along with the said application. However, the trial Court merely dismissed the application on the ground that the matter has been adjourned for about twenty one hearings and submitted that such reason is not proper and he should have given an opportunity to contest the suit.

5.The learned Counsel appearing for the respondent would submit that the suit is of the year 2005 and decreed exparte. Till now, no amount has been paid and there is no bonafide in the application. Hence, the trial Court has rightly dismissed the application to set aside the exparte decree dated 25.01.2006.

6.I have perused the materials on record. Admittedly, exparte decree was passed on 25.01.2006 for non-filing of the written statement. It is to be noted that immediately, the application in I.A.No.129 of 2006 was filed to set aside the exparte decree. When the above application was pending for about twenty one hearings, the same was dismissed for default on 31.08.2007. To restore the above application, the application in I.A.No.230 of 2007 which is impugned in this revision, is filed. The above application has also been filed within stipulated time which is also not in dispute.

7.It is curious to note that trial Court has dismissed the application on the ground that the I.A.No.129 of 2006 was adjourned for twenty hearings. The trial Court has not specifically found that only the revision petitioner was the reason for such adjournment. Even assuming that the application was adjourned for several times, the trial Court ought not to have granted such adjournments. When the application to set aside the exparte decree was filed within the stipulated period of time and written statement has also been filed, the trial Court ought to have entertained the application to give an opportunity to the revision petitioner to set aside the exparte decree on merits.

8.The suit itself is filed based on various promissory notes executed by the defendants. The plaint documents indicate only one promissory note, said to have been executed by the 2nd defendant. However, the entire relief has been sought as against both the defendants. Since, the written statement is also filed, the trial Court ought to have given an opportunity to the revision petitioner to establish their case. But dismissing the application on technical grounds, would amount to shutting the rights of the parties at an earlier stage. In fact, it affects the substantial rights of the parties. Even when there is a technical objection, the technicalities should yield to the substantial justice.

9.Therefore, the order of the trial Court dismissing the application filed to restore the application in I.A.No.129 of 2006 is set aside and the revision is allowed subject to the deposit of a sum of Rs.2,00,000/- by the revision petitioner in the credit of the suit before the trial Court within four weeks from the date of receipt of the copy of this order. On such deposit, the trial Court shall frame issues and dispose of the suit within six months from the date of receipt of the copy of this order.

10.In the result, this Civil Revision Petition is allowed and the applications in I.A.No.230 of 2007 & 129 of 2006 are set aside. Consequently, connected miscellaneous petition is closed.
ay

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To
The Principal District Judge,
Puducherry.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.20213
+1cc to Mr.T.S.Baskaran, Advocate, SR.No.20057

C.R.P.No.552 of 2009
and
C.M.P.No.1 of 2009

Kak (30/05/2019)