

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4101 of 2011  
and M.P.No.1 of 2011

1. Banumathi  
2. Narayanamoorthi  
3. Jothimani .. Petitioners

Vs

K.Ramasamy .. Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decree passed in IA No.928 of 2011 in IA No.1769 of 2010 in Unnumbered I.A.No.---- of 2007 in O.S.No.320 of 2006 dated 20.08.2011, on the file of the District Munsif Court at Udumalpet.

For Petitioners : Mr.R.Nalliyappan

For Respondent : No appearance

**ORDER**

The defendants in OS No.320 of 2006 on the file of the District Munsif Court, at Udumalpet, are the petitioners herein.

2. Before the said Court, respondent in the Civil Revision Petition filed a suit as against the revision petitioners and claimed Rs.63,533/- based on the promissory note executed by the revision petitioners. The

petitioners herein after entering appearance filed the written statement and when the suit was posted for trial, they have not appeared before the Court below on 28.12.2006 and thereby, the learned District Munsif, Udumalpet passed an exparte decree against the revision petitioner. Immediately, the revision petitioners filed interlocutory application in the year 2007, to set aside the exparte order. The said application was allowed and thereafter, the exparte order pending against the revision petitioners was set aside.

3. Thereafter, again on 02.04.2009 for the same reason that the petitioners have not appeared before the trial Court, again an exparte order was passed against the revision petitioners. In this connection, they have not filed any application immediately within the period of limitation. However, they filed application in the year 2010, under Section 5 of the Limitation Act and prayed to condone the delay of 416 days in filing the application to set aside the exparte decree. The said application was assigned with a case number as IA No.1769 of 2010 and the same was dismissed on 17.02.2011. So, without any alternative, the petitioners filed one another application in I.A.No.928 of 2011 under Order IX Rule 9 of CPC on 16.03.2011 to restore IA No.1769 of 2010. The learned District Munsif,

Udumalpet, after affording an opportunity to the respondent herein for raising his objections, by order dated 20.08.2011, allowed the application filed by the revision petitioners with a condition that the revision petitioners should deposit Rs.20,000/- before the said Court on or before 05.09.2011.

4. Aggrieved over the same, the petitioners are before this Court with the present Civil Revision Petition.

5. Today, when the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioners was present and he submitted that the petitioners have not complied with the conditional order negligently and further he prayed for one more chance to the petitioners for facing the trial.

6. On the other hand, learned counsel appearing for the respondent would contend that in the Civil Revision Petition filed by the revision petitioners it is necessary to see the conduct of the petitioners and the same establishes the fact that the revision petitioners are attempting to protract the proceedings before the trial Court.

7. Upon considering the arguments advanced by either side, it is true that the suit pertaining to Civil Revision Petition has been filed in the year 2006 and thereafter, for the reason that the petitioners have not appeared before the trial court, twice, exparte order has been passed against the revision petitioners. In fact it is not in dispute that the suit has been filed for relief of recovery of Rs.63,533/- based on the pro-note executed by the revision petitioners. If really the petitioners are having a good case, it is for them to face the trial immediately after entering appearance. But without facing the trial and also without any specific reason, revision petitioners left the matter unrepresented twice and thereafter, filed the application pertaining to the impugned order passed.

8. In the affidavit filed before the trial Court, the petitioners have stated that on the date on which the case was posted they were suffering from stomach pain and dysentery and thereby, they are not in a position to contact their Advocate for giving instructions. If it is true, definitely they would have taken treatment and in order to prove the same, could have filed the relevant documents in respect of the treatment given to them. More than that even assuming that the 1st petitioner was suffering from fever, nobody prevented the 2nd and 3rd petitioners to contact their

Advocate and proceed with the case. For the suit filed in the year 2006 that too for money claim of Rs.63,533/- revision petitioners have filed application in the year 2011 to set aside the exparte order and till now, the set aside application is pending. If really the petitioners have approached the trial Court with bonafide intentions, it is for them to deposit Rs.20,000/- in the Court account and face the trial. Therefore, the conduct of the party who filed the Civil Revision Petition shows that they are attempting to protract the proceedings, which cannot be encouraged by this Court.

9. In view of the above discussion, the Civil Revision Petition stands dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

21.11.2019

Speaking/Non-speaking order

Index: Yes/No

Internet: Yes

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To

The District Munsif Court at Udumalpet.

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R.PONGIAPPAN, J.,

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