

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1238 of 2015
and
M.P.No.1 of 2015

V.K.Muthuswamy

... Petitioner

Vs.

V.Govindaraj

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decretal order dated 20.01.2015 made in I.A.No.267 of 2012 in O.S.No.41 of 2010 on the file of District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.K.Sudhakar

For Respondent : No appearance

ORDER

Heard Mr.K.Sudhakar, the learned counsel for the petitioner. Though the notice has been served on the respondent and his name is printed in the cause list, there is no representation for the

respondent.

2.The petitioner is aggrieved by the fair and decretal order dated 20.01.2015 passed by the District Munsif Court, Gobichettipalayam in I.A.No.267 of 2012 in O.S.No.41 of 2010.

3.By the impugned order the court has dismissed I.A.No.267 of 2012 filed by the petitioner to condone the delay of 283 days in filing application to set aside the exparte decree dated 02.02.2011.

4.The petitioner is the defendant in O.S.No.41 of 2010. The respondent herein filed the above said for recovering the amount of Rs.92,306.25 based on the promissory note dated 11.07.2007.

5.In the said suit, the summons were served on the petitioner/defendant. The summons was sent to the address of the petitioner, where the petitioner/defendant was residing 5 years before. Under these circumstances, the summons were returned with an endorsement the party has left the place and such no addressee on the address. The petitioner set exparte and therefore the exparte decree was passed by the Court in the said suit on 02.02.2011.

6.The petitioner thereafter filed I.A.No.267 of 2012 in O.S.No.41 of 2010 to condone the delay of 283 days in filing the application to set aside the exparte decree dated 02.02.2011. The court has dismissed the application on the ground that substituted service of summons was served on petitioner/defendant and the petitioner has not properly explained the reason for condoning the delay.

7.The learned counsel for the petitioner submitted that the petitioner and the respondent are the relatives to each and other. Therefore, the service of summons by giving wrong address was not justified. The learned counsel for the petitioner has relied on the following decisions:-

- i. **N.P.Srinivasan vs S.Santhalakshmi**, 2013 (3) CTC 220.
- ii. **The Motor & General Finance Limited vs S.Durailingam also known as S.Duraisingam and another**, 2009 (3) CTC 342.
- iii. **K.Loganathan vs K.Sahadevan and Others**, 2013 (2) CTC 177.

8.Considering the submissions of the learned counsel for the

petitioner, I am inclined to interfere with the impugned order passed by the lower court. The impugned order is set aside.

C.SARAVANAN, J.

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9.It is noticed suit is of the year 2010. Therefore, the learned District Munsif, Gobichettipalayam is directed to dispose the suit on merits within a period six months from the date of receipt of a copy of this order in accordance with law.

10.The present Civil Revision Petition is allowed with the above above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

30.07.2019

Index:Yes/No
Internet:Yes/No

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Note:- Issue Order Copy On 06.08.2019

To

1.The District Munsif Court,
Gobichettipalayam.

2.The Section Officer, V.R.Section,
High Court, Madras.

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