

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3305 of 2012
and
M.P.No.1 of 2012

M.Sudhakaran

...Petitioner

Vs.

1.K.Perumal Chettiar
2.P.Nagaraj
3.P.Ramamoorthi
4.M.Jeya @ Jeyalakshmi
5.P.Nataraj

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 31.10.2011 made in I.A.No.51 of 2011 in O.S.No.304 of 2006 on the file of the Principal District Munsif, Namakkal.

For Petitioner : Mr.C.Jagadish

For Respondents : Mr.V.Lakshmi Narayanan
for R1 to R4

R5 not ready in notice

ORDER

Challenging the order passed in I.A.No.51 of 2011 in O.S.No.304 of 2006 on the file of the Additional District Munsif, Namakkal, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.304 of 2006 for recovery of money. It is the case of the plaintiff that the defendants' Power Agent namely N.Natchimuthu borrowed a sum of Rs.25,000/- from the plaintiff and executed a promissory note. Since the defendants failed to repay the loan amount, the suit has been filed by the plaintiff.

3. Notice was sent to the Power Agent, however, he chose not to appear before the Trial Court. Therefore, the suit was decreed set exparte on 19.06.2006. Thereafter, the defendants filed an application in I.A.No.51 of 2011 to condone the delay of 1589 days in filing the application to set aside the exparte decree dated 19.06.2006.

4. In the affidavit filed in support of the petition, the defendants have stated that the Power Agent and the plaintiff are partners in a finance

company called Malar Finance and that the plaintiff, in collusion with the Power Agent, filed the suit and obtained an exparte decree against the defendants. On the same set of facts, another partner by name K.Subburayan, filed a suit in O.S.No.303 of 2006 against one A.Navaladi and another for recovery of a sum of Rs.25,000/-. Even in the said suit, the defendants therein were represented by the very same Power Agent, N.Natchimuthu and that suit was also decreed exparte and an application was filed under Section 5 of the Limitation Act in I.A.No.305 of 2011 to condone the delay of 1583 days in filing the application to set aside the exparte decree. The trial Court dismissed the application finding that the defendants were not served with notice prior to the passing of exparte decree. Aggrieved over the same, the plaintiff therein filed C.R.P.No.1159 of 2012 and this Court, by order dated 03.04.2017, dismissed the Civil Revision Petition.

5. The learned counsel appearing for the respondents submitted that the order passed in C.R.P.No.1159 of 2012 would cover the present Civil Revision Petition also.

6. It is settled position that the defendants should be given due opportunity of hearing and they should be served with prior notice. In the case on hand, the plaintiff sent notice only to the Power Agent, N.Natchimuthu and not to the defendants. In other words, the defendants were not served with any notice in O.S.No.304 of 2006. It is settled position that in the absence of service of summons on the defendants, any order passed against the defendants is liable to be set aside, on this ground alone. The defendants in their affidavit specifically stated that the Power agent is planted by the plaintiff to grab the property of the defendants. The defendants came to know about the exparte decree only on 22.10.2010. In order to establish the defendants case, they have produced 19 documents, which were marked as Exs.P1 to P19. From the perusal of the cause title in O.S.No.304 of 2006, it can be seen that the defendants were represented by the Power Agent, N.Natchimuthu. However, the plaintiff did not file the original Power Deed or sought any permission under Order 3 Rule 1 and 2 of the Civil Procedure Code.

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7.It is also pertinent to note that in the summons issued to the Power Agent, the Power Agent N.Natchimuthu had received the summons in the suit and the plaintiff M.Sudhakaran signed the suit summons as a

witness and also in the application filed for attachment before judgement. This itself would establish that the plaintiff had filed the suit in collusion with the Power Agent, N.Natchimuthu. In spite of receiving the summons, the Power Agent did not take any steps to contest the suit. He allowed the suit to be decreed ex parte against the defendants.

8. Even summons in the execution petition in E.P.No.59 of 2007 was served only on the Power Agent, N.Natchimuthu. The Execution Petition was also ordered ex parte and a sale proclamation was ordered. Ten items of the properties were attached and sold in a public auction for Rs.2,51,000/- for realization of the suit pronote amount of Rs.25,000/-. Out of the sale amount, the plaintiff withdrew a sum of Rs.31,259/- and the remaining amount of Rs.2,12,181/- was withdrawn by the Power Agent, N.Natchimuthu. Even in the application filed by the Power Agent, the plaintiff endorsed no objection. All these things put together would establish the collusion between the plaintiff and the Power Agent, N.Natchimuthu. The trial Court, taking into consideration all these aspects, rightly condoned the delay and allowed the application.

9. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2019

Index : Yes / No
Internet : Yes
Speaking order / Non Speaking Order

ms

To

The District Munsif cum Judicial Magistrate,
Thittakudi

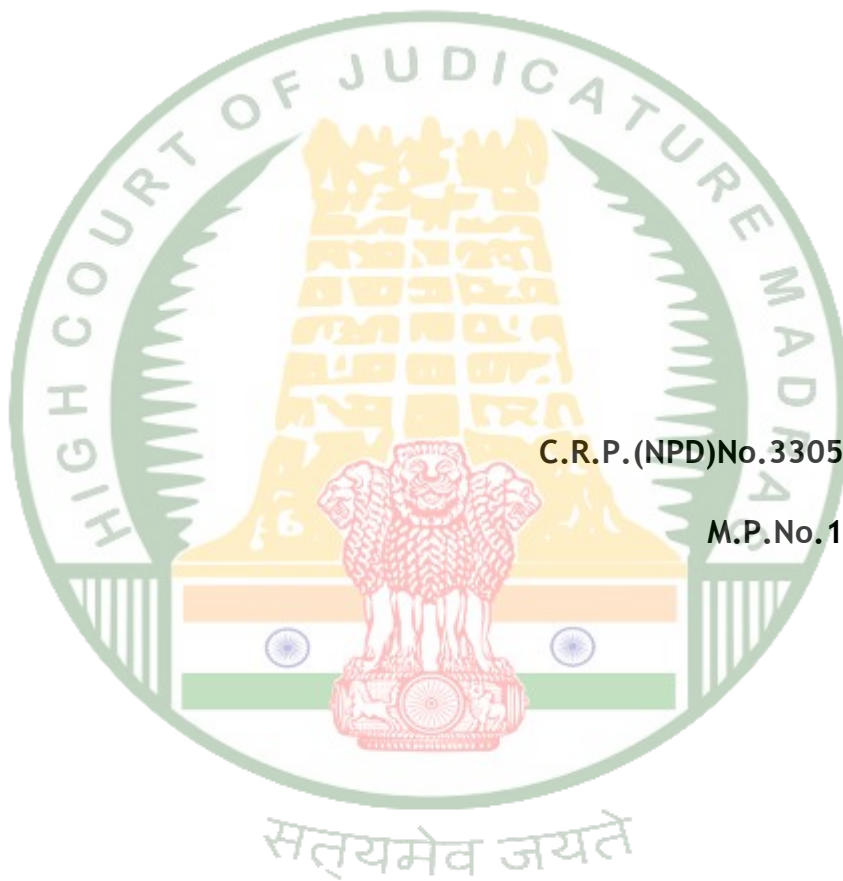


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M.DURAIWAMY, J.

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