

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2019

PRONOUNCED ON : 27.11.2019

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.R.P. (NPD) NO.3417 OF 2012

Ramesh ...Petitioner

Sri Ramulu Vs. ...Respondent

Prayer:

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 26.06.2012 passed in I.A.No.175 of 2012 in O.S.No.420 of 2009 on the file of Additional District Munsif Court, Thiruvannamalai.

For Petitioner : Mr. P. Jagadeesan
For Respondent : No appearance

ORDER

The defendant in O.S.No.420 of 2009 on the file of the Additional District Munsif Court, Thiruvannamalai, is the petitioner herein.

2. Before the trial Court the respondent in this Civil Revision Petition, filed a suit for the relief of direction, directing the

defendant/revision petitioner to pay a sum of Rs.1,00,000/- together with subsequent interest from the date of plaint at 12% per annum and also cost of the suit.

3. Before the trial court, the suit was decreed on 18.02.2010 and immediately thereafter, the respondent/plaintiff filed an Execution Petition in E.P. No.36 of 2011 for realising the decreed amount. In the EP proceedings, the property of the petitioner/defendant was brought for sale on 03.08.2011. Only in the said circumstance, the petitioner/defendant has approached the Additional District Munsif of Tiruvannamali with a prayer to condone the delay of 687 days in presenting the application to set aside the exparte decree. The learned Additional District Munsif, Tiruvannamalai, after affording an opportunity to the respondent herein, by order dated 26.06.2012, dismissed the application filed by the petitioner. In the impugned order, the learned Additional District Munsif, Tiruvannamalai, has categorically mentioned that as the summons issued to the petitioner/defendant was served on his father, the service of summons in respect of the petitioner/defendant was held sufficient, and further held that the reason stated by the petitioner that he has not been served with the summons is unbelievable and hence, the petitioner/defendnat is not

entitled for the relief as prayed in the petition.

4. Today, when the petition came for hearing, the learned counsel appearing for the petitioner made his submissions before this court that before passing the exparte decree, the petitioner was not served with the notice and the same was also admitted by the respondent/plaintiff as true. Hence, it cannot be held that the service of notice in respect of the petitioner was held sufficient. The learned counsel for the petitioner further submitted that for giving one more opportunity to the petitioner, it is necessary to set aside the order dated 26.06.2012 passed by the Additional District Munsif, Tiruvannamalai.

5. Now considering the submissions made by the counsel appearing for the petitioner, it would be relevant to see the affidavit filed by the petitioner along with the petition, filed under Section 5 to condone the delay of 687 days. In para-3 of the affidavit, the petitioner fairly conceded that he has calculated the number of days to be condoned only from the date of knowledge. Accordingly, he has not calculated the delay from the date on which the the exparte decree has been passed against the defendant.

6. Though it was stated on the side of the petitioner that he was not served with the notice, it is not in dispute that the summons

sent to the defendant/petitioner was received by his father. In the said circumstances, it is relevant to see Order 5 Rule 15 of CPC .

15. Where Service may be on an adult member of defendant's family - *Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him."*

Though it was argued on the side of the petitioner that the petitioner was not residing with his father, in order to prove the same, no one has been examined on the side of the petitioner. It is very easy for him to produce his father before the court below and denied the contents raised by the respondent/plaintiff that the father of the petitioner has received the summons. Without substantiating the averments set out in the affidavit by the petitioner, the argument put forth by the counsel for the petitioner as above, is not at all to be considered.

7. More than that, the respondent herein filed a suit against the Revision Petitioner in the year 2009 for the relief of recovery of Rs.1,00,000/-. After the institution of the suit, so far, no amount has been paid by the petitioner and atmost, he has filed an application only at the time when the property was brought for sale. So, the attitude committed by the petitioner is nothing but he is attempting to protract the proceedings. Accordingly, I am of the considered opinion that the impugned order passed by the court below is well within the legal framework. Accordingly, the Civil Revision Petition is dismissed. No costs.

27.11.2019

Index : Yes/No
Internet:Yes/No
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1. Additional District Munsif Court, Thiruvannamalai
2. The Section Officer, V.R.Section, High Court, Madras.

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R. PONGIAPPAN, J.

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