

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.3501 of 2012 and
M.P.No.1 of 2012

C.R.Hariprasad

...Petitioner

Vs.

T.L.Guruvayurappan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the order dated 24.08.2012 passed in I.A.No.16496 of 2010 in O.S.No.9543 of 2006 on the file of the learned VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Kannan

For Respondent : Mr.A.Sheik Peer

ORDER:

The defendant in O.S.No.9543 of 2006 on the file of the learned VII Assistant Judge, City Civil Court, Chennai is the petitioner herein. Challenging the order dated 24.08.2012 passed in I.A.No.16496 of

2010 in O.S.No.9543 of 2006, the petitioner is before this Court with the present Civil Revision Petition. Originally the respondent in this Civil Revision Petition filed a suit for the recovery of money. For the reason that the defendant has not appeared before the trial court, the learned VII Assistant Judge, City Civil Court, Chennai effected the publication and thereafter passed an exparte order and decreed the suit as prayed by the respondent.

2.The petitioner herein filed an application under Section 5 of Limitation Act and prayed to condone the delay of 960 days in filing the petition to set aside the exparte decree dated 05.11.2007. The learned VII Assistant Judge, City Civil Court, Chennai by order dated 24.08.2012 allowed the application with condition that the petitioner has to deposit 50% of the suit claim amount, for example Rs.2,04,000/- on or before 24.09.2012. Aggrieved over the same, the petitioner is before this Court and prayed to set aside the order dated 24.08.2012.

3.Today when the petition is came up for hearing, the learned counsel appearing for the petitioner is present and made a submission that before passing an order of exparte decree, the petitioner is not

served with notice. Even after knowing the present address of the petitioner, the respondent with ill motive, not taking any effective step to serve the notice to the petitioner. Before filing the suit, he has filed a criminal case against the petitioner in C.C.No.3518 of 2006 on the file of the learned XVIII Metropolitan Magistrate, Saidapet. In the said case, he has filed the copy of the exparte decree passed by the court below now under challenge only on 02.07.2010 and then only the petitioner came to know about the order passed and also about the institution of suit by the respondent. The said circumstances enable the court to find out that the respondent adopted foul play method and obtained a decree and thereby passing the conditional order by the court below is erroneous one.

4. On the other hand, the learned counsel appearing for the respondent fairly conceded that before effecting substitute of service, no notice was served to the petitioner.

5. Upon considering the arguments advanced by either side with the factual aspects found in this case, since the criminal case was filed by the respondent against the petitioner before instituting the suit, it is very easy to the respondent in serving notice to the petitioner. Since

the petitioner has appeared in the criminal case, it is further easy for the respondent to serve notice or to inform the same before the court concerned. But without adopting those methods which is easy for effecting the proper service, getting an order for substitute of service and effecting the publication is not fair on the part of the respondent. Since the petitioner appeared in the criminal case, it cannot be said that the petitioner has wantonly refused to receive the summons. So the said circumstances reveal the fact that the decree was passed without the knowledge of the petitioner. So it cannot be said that the conditional order passed by the learned VII Assistant Judge, City Civil Court, Chennai is the correct one. So in order to give one more opportunity to the petitioner, I am inclined to allow the Civil Revision Petition and accordingly modified the order dated 05.11.2007.

6.In the light of the above, the Civil Revision Petition is allowed and the condition imposed in the order dated 24.08.2012 is set aside. However, since the suit is pending from the year 2006, it is appropriate to issue some direction to the court below to dispose the suit within a specific period. The learned VII Assistant Judge, City Civil Court, Chennai is directed to dispose the suit in O.S.No.9543 of 2006 as early as possible, preferably within a period of three months from

the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

11.11.2019

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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R.PONGIAPPAN,J.

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To
The learned VII Assistant Judge,
City Civil Court,
Chennai.



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