

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

A.No.1825 OF 2018

IN

C.S.NO.98 OF 2007

M.THANGAVEL,
S/O.NARAYANAN,
NO.131, MADURAI MEENAKSHI STREET,
GANDHI NAGAR,
EKKATTUTHANGAL,
CHENNAI-600 091 ..Plaintiff

-VS-

DR A.SARASA BHARATHI,
W/O LATE DR S.ARUMUGAM,
DOOR NO.78-A, N.NO.12, GULMOHAR AVENUE,
VELACHERI, GUINDY, Chennai-600 032 ..Defendant

A.No.1825 of 2018:

DR. A.SARASA BHARATHI,
W/O. LATE DR S.ARUMUGAM,
DOOR NO.78-A, N.NO.12, GULMOHAR AVENUE,
VELACHERI, GUINDY,
Chennai-600 032 ..Applicant/Defendant

-VS-

M.THANGAVEL,
S/O.NARAYANAN,
NO.131, MADURAI MEENAKSHI STREET,
GANDHI NAGAR,
EKKATTUTHANGAL,
CHENNAI-600 091 ..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased

<https://hcservices.ecourts.gov.in/hcservices/courtservices/index.html> set aside the ex-parte decree dated 03/09/2009 in

C.S.No.98 of 2007.

This application coming on this day before this court for hearing the court made the following order:

The defendant/Judgment Debtor filed this application praying to set aside the ex-parte decree dated 03.09.2009 made in the suit.

2. The suit is for recovery of money, which was filed in the year 2007. Despite service of notice, the applicant/defendant failed to appear before this Court in the suit leading to the passing of the ex-parte decree on 03.09.2009 on merits. The respondent/plaintiff filed E.P.No.107 of 2015, which was also ordered ex-parte on 02.03.2016. It is stated that the applicant/defendant engaged two Advocates successively to appear in the suit, but both of them failed to pursue the suit and it is only when the applicant/defendant received the notice for proclamation of sale on 13.10.2017, she came to know about the inadvertent acts of her counsel. Hence, she filed an application in A.No.40 of 2018 to condone the delay of 3007 days in filing the application to set aside the ex-parte decree, which was allowed by this Court on 20.02.2018, appreciating the reasons assigned by her. For the same reasons, she prayed for setting aside the ex-parte decree.

3. Resisting the prayer, the respondent/plaintiff filed a counter-affidavit dated 22.07.2019, wherein, *inter alia*, it is pleaded that this is the second petition seeking for setting aside the ex-parte decree, as the applicant did not pursue her first application filed in the year 2010 for the

same relief. Having done so, she cannot maintain this application for the very same relief. It is also stated that the money transaction between them took place in the year 2004 and he filed the suit during 2006, which was numbered only in the year 2007. Though the suit was decreed ex-parte on 03.09.2009 on merits, even after a decade, he cannot taste the fruits of the decree, but for the deliberate acts of the applicant/defendant. Hence, the respondent/plaintiff seeks for dismissal of this application.

4. Heard both sides and perused the materials placed before this Court.

5. Admittedly, the ex-parte decree was passed as early as on 03.09.2009. E.P.No.107 of 2015 filed for execution of the same was also ordered ex-parte on 02.03.2016. The application in A.No.1272 of 2016 seeking to set aside the ex-parte execution proceedings was also dismissed by the learned Master on 30.09.2016. The proclamation of sale in Pro.No.5 of 2017 was also issued. The challenge made to the same in A.No.7983 of 2017 along with the application in A.No.7985 of 2017 seeking to condone the delay in filing the application to set aside the ex-parte execution order dated 02.03.2016 was also met with the same fate at the hands of the learned Master on 21.02.2018. In such circumstances, the applicant/defendant filed A.No.40 of 2018 seeking to condone the delay of 3007 days in filing the application to set aside the ex-parte decree dated

03.09.2009. This Court allowed the said application on 20.08.2018. Now the applicant seeks the aforestated relief.

6. The applicant/defendant alleged that the claim of the respondent/plaintiff in the suit is based on the fabricated documents, as she neither borrowed any money nor issued any cheques as alleged. Narrating this, she engaged one counsel in the first instance, who failed to perform his duties and hence, she engaged another counsel, who also not fulfilled his obligations towards the client.

7. An Advocate engaged by a party should maintain communication with a client concerning the representation. An Advocate has an obligation zealously to protect and pursue a client's legitimate interest within the bounds of law. The conduct of the Advocate should not jeopardise the interest of the litigant. Admittedly, the defendant was set ex-parte for the first time and was not a chronic defaulter.

8. Though she filed petitions to condone the delay and to set aside the ex-parte decree during February, 2010, but she could not pursue the same due to her professional commitments, being a Doctor. She realised those mistakes only after the receipt of notice in the execution proceedings and notice for proclamation of sale. Hence, she is before this Court in this application seeking the aforesaid relief.

9. Though normally this Court would not entertain application of this nature, given the distance of time,

considering the reasons assigned by the applicant/defendant and taking into account the order passed by this Court on 20.08.2018 condoning the delay of 3007 days in filing this application seeking to set aside the ex-parte decree to enable the applicant/defendant to put forth her defence, this application is liable to be ordered.

10. Accordingly, this application is allowed. The ex-parte judgment and decree dated 03.09.2009 passed against the applicant/defendant/judgment debtor in the suit is set aside.

11. Since the suit is of the year 2007, the parties shall endeavour for the speedy disposal of the suit during trial.

Sd/.P.S.N.J.

20.09.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/24.09.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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