

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4102 of 2014 and
M.P.No.1 of 2014

P.Murugan

Petitioner

Vs

P.Thiagarajan

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 14.07.2014 passed in I.A.No.383 of 2014 in O.S.No.60 of 2012, on the file of Principal District Court, Pondicherry.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondent : Mr.N.Nagusah

ORDER

The Civil Revision Petition has been preferred against the order dated 14.07.2014 passed in I.A.No.383 of 2014 in O.S.No.60 of 2012, by the learned Principal District Judge, Puducherry.

2. The defendant in OS No.60 of 2012 on the file of Principal District Judge, Puducherry is the petitioner herein. Before the trial Court, the respondent as a plaintiff has filed a suit as against the petitioner and seeking the relief to direct the defendant to pay the suit amount. By a judgment and decree dated 16.11.2012, the learned Principal District Judge, Puducherry allowed the suit and granted decree in favour of the respondent. Based on the Decree passed in OS No.60 of 2012, the respondent has filed an execution proceedings in E.P.No.115 of 2013, as against the petitioner. During the pendency of the execution proceedings, the petitioner has filed an application under Section 5 of Indian Limitation Act to condone the delay of 203 days in filing the petition for setting aside the exparte decree dated 16.11.2012. The learned Principal District Judge, Puducherry after affording opportunity to the respondent herein by an order dated 14.07.2014, allowed the said application with the condition that the petitioner should deposit 50% of the suit amount before the trial Court, in which the suit was pending, on or before 14.08.2014.

3. Aggrieved over the findings arrived at by the learned Principal District Judge, Puducherry, the petitioner herein is before this Court with this Civil Revision Petition and pleaded to set aside the order dated 14.07.2014.

4. The learned counsel appearing for the petitioner would relied upon the judgment in 2007 (5) CTC 198 (D.K.Bhaskaran and another Vs. Barton Trust) of this Court and made a submission that the condition imposed by the learned Principal District Judge is onerous one. Further, he has made a submission that the liability of the petitioner has to be decided only at the time of trial. But the Court below before completion of the trial, fastened the liability on the petitioner and directed him to deposit 50% of the suit amount, which is erroneous in law.

5. In respect to the respondent, it seems that he has received the notice on 13.02.2014 and thereafter he has not turned up till today. Further, this Civil Revision Petition is of the year 2014 and is taken up on merits for disposal.

6. On considering the arguments advanced by the learned counsel appearing for the petitioner, it is pertinent to note that in the Judgment he relied upon, this Court has already in a similar situation, while directing the respondent to deposit the cost of Rs.44,573.25/- and Rs.3,71,175/- on or before 04.10.2006, this Court has clearly held that such type of cost imposed is onerous one. Further held, in the said circumstances, the petitioner has to prove the sufficient cause in respect to his absence before the Court on the date, on which the exparte order was passed.

7. Now, coming to the case in our hand, in the affidavit filed by the petitioner before the trial Court, he has stated that on the date, on which the case was posted for trial, he was suffering from jaundice and bed ridden for eight months. Further, he has stated that he came to know the fate of the case only after receiving the notice in execution proceedings. Before the trial Court, the said averment has not been substantiated with the relevant documents. If really, the petitioner was not able to appear before the Court, due to his illness, definitely, he would have the relevant medical records and the same might be exhibited before the trial Court. In other words, in the affidavit filed by him before the trial court, he has not stated anything about the receiving of notice sent by the court, which ordered in the original suit. Hence, it is crystal clear that without disclosing the real fact and without enclosing the relevant document to show his bonafide, the petitioner has merely filed the application before the trial court. This attitude of the petitioner reveals the fact that the petitioner has not shown any sufficient cause, before the trial Court. Therefore, the judgment relied on by the counsel appearing for the petitioner is not applicable to the factual position found in this present case.

8. Now, it is a case that the respondent has made a money claim against the petitioner for Rs.3,50,000/-. Since availing the loan

amount was denied by the petitioner, the same has to be decided only at the time of trial. In fact, the Suit has been filed in the year of 2012 and thereafter till now for the past 7 years, finality has not been reached. Therefore, it would appropriate to modify the condition imposed by the learned Principal District Judge, Puducherry and accordingly the same is modified to the effect that the petitioner/defendant shall deposit a sum of Rs.1,00,000/- before the Principal District Court, Puducherry, within two weeks from the date of receipt of copy of this order. If the said condition is complied with by the petitioner, the learned Principal District Judge, Puducherry is directed to dispose of the suit within a period of three months from the date on which the petitioner complied the condition.

9. With the above directions, this Civil Revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

24.09.2019

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To

The Principal District Court, Puducherry

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R.PONGIAPPAN, J.,

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