

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3079 of 2019 and
C.M.P.No.20009 of 2019

S.Vivekanandan ... Petitioner

Vs.

R.Kamalakannan ... Respondent

Prayer: Petition filed under Section 115 of the Civil Procedure Code to set aside the order dated 10.09.2018 passed by the learned Subordinate Judge at Kancheepuram in I.A.No.830 of 2017 in O.S.No.101 of 2013.

For Petitioner : Mr.N.Kumar Rajan

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.830 of 2017 in O.S.No.101 of 2013 dated 10.09.2018 by the Subordinate Judge, Kancheepuram.

2.The revision petitioner was the defendant in the suit, as against him, the respondent/plaintiff filed a suit for recovery of money on pro-note. According to the revision petitioner/defendant, though suit summon was issued in the year 2013 to his Kancheepuram

residential address and the same was received by the defendant's wife and she also informed the defendant that she received a suit summon from the Court, but she misplaced the same. In view of the misplacement, the defendant was not in a position to know what proceedings had been initiated against him, by which Court and therefore, he could not immediately pursue the matter and only on 25.01.2017 through the counsel of the defendant, who defended the EP, filed by the respondent /plaintiff, he came to know that there had been *ex parte* money decree against him, pursuant to which, the E.P. was filed to recover the money. Only thereafter, the revision petitioner /defendant claimed that, he obtained the copy of the plaint, by applying certified copy before the Court below and thereafter was taking steps to file a petition under Order 9 Rule 13, to set aside the *ex parte* decree, where there has been a delay of 1266 days in filing the said Order 9 Rule 13 petition and in order to condone the said delay, an application in I.A.No.830 of 2017 was filed under Section 5 of the Limitation Act and the same has now been dismissed through the impugned order. As against which, the present revision has been filed.

3.I have heard the learned counsel for the petitioner and I have

gone through the materials placed before this Court.

4.Before the trial Court, the suit summon was admittedly served on the defendant, as he admits that his wife received the suit summon. Thereafter, since the defendant not appeared before the Court below, he was set *ex parte* and after taking *ex parte* evidence, the suit was decreed by the Court below on 26.08.2013 where the trial Court has marked Exs.A.1, A.2 and A.3. Ex.A.1 is the Pro-note. Ex.A.2 is the Legal Notice issued to the defendant and Ex.A.3 is the Acknowledgment. Based on these documents, suit was decreed.

5.These documents filed by the plaintiff, marked before the Court below, would normally reveal that, before filing the suit, the plaintiff had issued a demand to the defendant, which had also been received by him, as the acknowledgment had been filed and marked as Ex.A.3 before the Court below. However, the learned counsel appearing for the revision petitioner submits that, the defendant disputes the receipt of the legal notice and also the veracity of the Ex.A.1 – Pro-note.

6.Be that as it may, since the issue now is, whether the revision petitioner/defendant is having any sufficient and justifiable reason to condone the huge delay of 1266 days in filing Order 9 Rule 13 petition or not. In this context, it is an admitted case on the part of the defendant that, his wife received suit summon and she misplaced in the year 2013 and thereafter, the defendant has not taken any steps to follow the matter, as what proceedings had been initiated against him. Further, Ex.A.3 marked before the Court below discloses that, there had been acknowledgment for having receipt of the legal notice issued by the plaintiff before laying the suit. These documents and factual aspect would go to show that, the revision petitioner/defendant, having receipt of first, legal notice and subsequently, the Court suit summon from the Court, had not acted upon and after several years only, after the E.P. was filed and a notice was issued in the execution petition, he started acting and filing the present application under Section 5 of the Limitation Act with a huge delay of 1266 days. No plausible or acceptable reason has been given by the revision petitioner/defendant before the Court below in the affidavit filed in support of the said application and therefore, there is every justification on the part of the EP Court to dismiss the said application

through the impugned order.

7. Therefore, in that view of the matter, this Court considers that absolutely there is no reason to interfere with the said impugned order. Accordingly, the revision petition fails and hence, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

18.09.2019

Sgl

To

The Subordinate Judge,
Kancheepuram.



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R.SURESH KUMAR, J.
Sgl



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