



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
C.R.P.(PD) (MD) No.1024 of 2012
and M.P.No.2 of 2012

Ponnambalam

... Petitioner/Petitioner/Defendant

-vs-

Soundarapandian

... Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside against the fair and decreetal order dated 21.02.2011 made in I.A.No.731/2010 in O.S.No.153/2008 on the file of the District Munsif Court, Thuraiyur.

For Petitioner : Ms.S.Parkavi
for M/s.R.Subramanian

For Respondent : No appearance

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 360 days in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant. The respondent filed a suit for recovery of money against the petitioner. The petitioner also filed a written statement denying the very signature that was found in the promissory note and he took a very specific stand that the signature is forged in the promissory note. During the course of proceedings, the petitioner did not prosecute the case and therefore, he was set exparte. An application came to be filed to set aside the order setting the petitioner exparte. This application was allowed subject to terms. The petitioner did not fulfill the terms and therefore, ultimately, an exparte decree came to be passed on 06.08.2009.

3. The respondent thereafter proceeded to file an execution petition. At that point of time, the present application came to be filed by the petitioner in I.A.No.731/2010 to condone the delay of 360 days in filing the petition to set aside the exparte decree. The



Court below dismissed the application mainly on the ground that the petitioner was aware of the fact that he was set exparte, even when the suit was pending and also on the ground that the petitioner failed to fulfill the terms imposed by the Court and therefore, the present petition cannot be maintained before the Court.

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4. Ms.S.Parkavi, learned counsel appearing on behalf of the petitioner, submitted that the petitioner has denied the very signature that was found in the promissory note and the signature of the petitioner was forged by the respondent. The learned counsel further submitted that the earlier order, that was passed by the Court below, was in a petition filed to set aside the order setting the petitioner exparte and that order will have no bearing to the present petition that was filed by the petitioner. The learned counsel further contended that the judgment that was relied upon by the Court below will not have any application to the facts of the present case. The learned counsel concluded her arguments by submitting that the petitioner may be given one final opportunity to defend the suit and this Court can also fix the time limit for completion of the proceedings.

5. The respondent has been served with notice and his name has also been printed in the cause list. However, there is no representation for the respondent.

6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

7. The respondent has filed a suit for recovery of money based on a promissory note. The petitioner is contending that the promissory note is a forged document and the petitioner never executed such a promissory note in favour of the respondent. During the pendency of the suit, the petitioner had filed a petition to set aside the order setting the petitioner exparte and the same came to be allowed on terms. Since the terms were not fulfilled, the petition came to be dismissed. Subsequently an exparte decree came to be passed by the Court below on 06.08.2009.

8. The reason that has been assigned by the petitioner in the affidavit filed in support of the condone delay petition is that the counsel, who was appearing for the petitioner, did not inform the petitioner about the stage of the proceedings and the petitioner came to know about the dismissal of the earlier petition and the exparte decree, only after the petitioner received a notice in the execution petition.

9. Taking into consideration the defence that has been taken by the petitioner in the suit, this Court is of the considered view that one final opportunity can be given to the petitioner to defend the suit before the Court below. However, considering the



relief that has been sought for in the suit and also considering the time that has elapsed, this Court wants to allow this Civil Revision Petition by imposing some conditions.

10. In the result, the fair and final order passed by the Court below in I.A.No.731/2010 dated 21.02.2011 is hereby set aside. The delay of 360 days in filing the petition to set aside the exparte decree is condoned. The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) before the Court below to the account of O.S.No.153/2008 within a period of six weeks from the date of receipt of copy of this order. Immediately on such deposit, a memo shall be filed before the Court below along with a proof for deposit and the Court below shall set aside the exparte decree passed on 06.08.2009. The Court below shall proceed further with the main suit and dispose of the same within a period of three months thereafter. If, in case, the petitioner fails to deposit the amount within the time stipulated by this Court, the exparte decree shall become final.

11. This Civil Revision Petition is allowed with the above conditions. No costs. Consequently connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

RR
To
The District Munsif Court,
Thuraiyur

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-90298[F] dated 30/09/2019)

C.R.P. (PD) (MD) No.1024 of 2012
and M.P.No.2 of 2012

_KK/SAR/17.10.2019/3P-3C/