



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD) No.2268 of 2011

and

M.P. (MD) No.1 of 2011

Subramanian ... Petitioner/Petitioner/Defendant

Vs.

Ramanathan ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India against the order dated 25.08.2011 in I.A.No.155 of 2011 in O.S.No.178 of 2004 on the file of the District Munsif cum Judicial Magistrate, Thiruppathur.

For Petitioner : Mr.J.Anandkumar
For Respondent : Mr.T.Antony Arul Raj

O R D E R

This Civil Revision Petition is filed by the defendant challenging the order passed by the learned District Munsif cum Judicial Magistrate, Thiruppathur dismissing the application moved by the defendant for condoning the delay over two years in filing the application to set aside the ex-parte decree.

2.The facts in brief necessary for disposing of the above application are as follows:

2.i)The respondent/plaintiff has filed the suit for recovery of a sum of Rs.90,180/- and in that a sum of Rs.70,000/- is principal amount, together with interest at the rate of 6% from the date of petition till the date of deposit, which according to the plaintiff was the amount that had been extended for a loan on promissory note by the plaintiff to the defendant.

2.ii) It is seen that a written statement had been filed by the defendant/revision petitioner stating that he had business dealings with the plaintiff and two of them are doing real estate business and that in the course of the said business, the power of attorney had been executed in favour of the plaintiff, which, after difference of opinion had arisen between the parties was cancelled by the defendant. It is also the defense of the defendant that his signature has been used to create the said promissory note and in fact the defendant had denied the signature in the said promissory note. The defendant has not come forward to prosecute the case and

an ex-parte decree came to be passed on 16.02.2016 and the said decree was sought to be executed by the plaintiff.

2.iii) At this juncture, the defendant has come forward with the petition which is the subject matter of the revision contending that he has been suffering from Jaundice and he has taken constant treatment and therefore he was unable to contact his counsel as a result of which an ex-parte decree came to be passed. The plaintiff had contested the said application stating that the reasons given are absolutely false and the defendant has not explained the delay.

2.iv) The learned District Munsif cum Judicial Magistrate, Thiruppathur, after hearing both parties had dismissed the said application stating that the reasons given are very sketchy and there is no supporting documents or evidence to prove the contention. Challenging the said order, this revision petitioner/defendant is before this Court.

3. Heard both the learned counsels.

4. While the matter was pending, the parties had attempted to negotiate the settlement. However, the same had failed. Considering the fact that the substantial defense has been put forward by the defendant that the signature obtained is a forgery and also the fact that there had been earlier business relationship between the parties, this Court is of the view that the defendant should be given a chance to substantiate his case. However, considering the fact that there is delay over 2 years which has not been very satisfactorily explained, the delay is condoned on condition that a sum of Rs. 1 lakh shall be deposited within a period of two weeks from the date of receipt of a copy of this order to the credit of O.S.No.178 of 2004 on the file of the learned District Munsif cum Judicial Magistrate, Thiruppathur. Considering the fact that the reason enures to the application for setting aside the ex-parte decree as well, the ex-parte decree is also set aside. On such deposit within the stipulated time, the learned District Munsif cum Judicial Magistrate, Thiruppathur, is directed to proceed with the case and he shall dispose of O.S.No.178 of 2004 within a period of two months from the date of deposit.

5. In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



The District Munsif cum Judicial Magistrate,
Thiruppathur.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-93314[F] dated
21/10/2019)

+1 CC to Mr.J.ANANDKUMAR, Advocate (SR-93289[F] dated 21/10/2019)

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