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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P.(MD)(NPD).No.448 of 2019
and
C.M.P(MD).No.2268 of 2019

P.Muthumani :Petitioner

Vs.

L.Shanmugasundaram :Respondent

Prayer: The Civil Revision Petition has been filed under Article 227 of Civil Procedure Code to set aside the fair and decreetal order passed by Principal Sub Court, Thanjavur in E.P.No.55 of 2018 in O.S.No.80 of 2013 dated 23.11.2018 and allow this revision petition.

For Petitioner : Mr.R.Sureshkumar

ORDER

This Civil Revision petition has been preferred by the petitioner against the order passed in E.P.No.55 of 2018 in O.S.No.80 of 2013 dated 23.11.2018.

2.E.P.No.55 of 2018 has been filed by the plaintiff based on the decree dated 11.06.2015 for an order to issue notice to the petitioner for the realization of the amount in Column Nos.7 and 8 with the subsequent interest and costs of Rs.1,40,436.50/- from the petitioner, failing which, the Court may be pleased to pass an order for sale of the petition mentioned property by public auction for realization of the said amount under Order 21 Rules 54, 64 and 66 of C.P.C. The description of the property is also furnished in the execution petition.

3.The petitioner herein namely, the respondent in E.P.No.55 of 2018 filed a counter statement stating that the suit was posted for cross examination on 04.06.2015 on the side of the plaintiff and on that day, the petitioner has not appeared and hence he was set exparte and an exparte decree was passed on 11.06.2015. It is the grievance of the petitioner that due to his illness, he could not appear before the Court and on that day, the suit was decided on merits and he was set exparte. He would further contend that if the application to set aside the exparte decree is not allowed,, he will be put to irreparable loss and mental agony. The said I.A.Sr.No.8289 of 2018 was filed by the petitioner on 23.07.2018 to condone the

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delay of 1114 days in filing the petition to set aside the exparte decree and it was not numbered. Aggrieved against the order, the petitioner has preferred this civil revision petition.

4.The grievance of the petitioner is that the Executing Court has not given an opportunity to file an application before the trial Court for setting aside the exparte decree. The further grievance of the petitioner is that the petitioner filed a petition for setting aside the exparte decree and that was not numbered by the trial Court. The Executing Court has also not given sufficient time to file a petition and his health condition is also a reason for not taking any steps in time. The further grievance of the petitioner is that the decree passed on 11.06.2015 which is an exparte decree only because of his health condition, he could not approach the Court. In the meanwhile, the execution petition was filed where the petitioner sought time to file a petition to set aside the exparte decree whereas the claim of the petitioner was not considered by the trial Court. However, the learned counsel for the petitioner undertakes that if any condition imposed which is reasonable, the petitioner will abide the said order and proceed with the same. Hence, the petitioner has filed this civil revision petition.

5.After hearing the submissions made on either side, the Executing Court observed that the decree was passed on 11.06.2015 and no amount has been paid subsequent to the decree. The Executing Court has also observed that the decree has been passed 3 ½ years before. The Executing Court has also observed that there is no reason to stop the execution proceedings. The Executing Court has also observed that the date of decree, as sought for by the petitioner to condone the delay of of 1114 days in filing the petition to set aside the exparte decree is not genuine one. Based on facts, the Executing Court has allowed the petition filed by the respondent and passed order of attachment on 23.11.2018.

6.On perusal of the records, it is seen that the suit has been filed for recovery of money, based on the loan transaction availed by the respondent for a sum of Rs.1,25,000/- by cash on 20.01.2012. The plaintiff has also issued legal notice before filing the suit. In spite of receipt of notice, the petitioner/defendant has not made any attempt to pay the loan amount. Hence, the suit was filed by the respondent. Though sufficient opportunity was given to the petitioner, he did not file the written statement and on the date of cross examination on the side of the plaintiff, the petitioner did not appear before the Court. Hence, the suit was decreed. Now, the grievance of the petitioner is that when the suit was not decided on merits, the exparte decree order passed by the trial Court has to be set aside and the order passed in the EP has also to be set aside.

7.The suit was filed in the year 2013 and the decree was passed in the year 2015 and the execution petition was filed in the year 2018 and the order of attachment passed on 23.11.2018. Now,

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the contention of the petitioner is that the Court below has not given an opportunity to prove his case by filing a petition to condone the delay of 1114 days in setting aside the exparte decree.

8.Since the petitioner is ready to abide any condition to be imposed by this Court, this Court directs the petitioner to deposit a sum of Rs.1,25,000/- before the Executing Court within a period of two weeks from the date of receipt of a copy of this order.

9.With the above direction, this civil Revision petition is disposed of. No costs. Consequently, C.M.P(MD).No.2268 of 2019 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS-)

To

The Principal Sub Court,
Thanjavur.

+1 CC to M/s.R.SURESH KUMAR, Advocate (SR-53882[F] dated 14/03/2019)

Order Made in
C.R.P.(MD)(NPD).No.448 of 2019
and
C.M.P(MD).No.2268 of 2019
13.03.2019

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