



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP (MD) No.647 of 2019

and

C.M.P. (MD) No.3322 of 2019

R.Ganesan

... Petitioner/Petitioner/Defendant

vs.

P.Ashok Kumar

... Respondent/Respondent /Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 27.08.2018 made in I.A.No.192 of 2017 in O.S.No.92 of 2013 on the file of the learned Subordinate Judge, Kulithalai, Karur District.

For Petitioner : Mr.M.Bindran

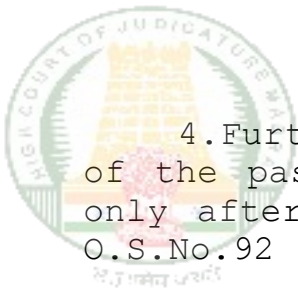
For Respondent : M/S.G.Vidhya Maheswaran

ORDER

This Civil Revision Petition has been filed to set aside the order dated 27.08.2018 made in I.A.No.192 of 2017 in O.S.No.92 of 2013 on the file of the learned Subordinate Judge, Kulithalai.

2.Before the trial Court, the petitioner herein is the defendant and the respondent herein is the plaintiff. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.192 of 2017 was filed by the defendant to condone the delay of 394 days in filing a petition to set aside the ex parte decree. in the said I.A., the defendant contended that the decree was passed in the suit in O.S.No.92 of 2013 filed by the plaintiff on 04.12.2015. For setting aside the order of the decree, the defendant has not filed a petition within a period of 30 days from the date of the decree and the delay of 394 days has occurred. Hence, the defendant filed the above said I.A., for the relief as stated above.



4. Further, the defendant contended that he was totally unaware of the passing of the decree and he came to know the said fact only after he receiving the notice on the E.P.No.140 of 2016 in O.S.No.92 of 2013.

5. On the other hand, the plaintiff very much denied the said averments made by the defendant and contended that the defendant has the knowledge about the passing of the ex parte decree and only to drag on the proceedings, he has filed the said I.A., at the very belated stage.

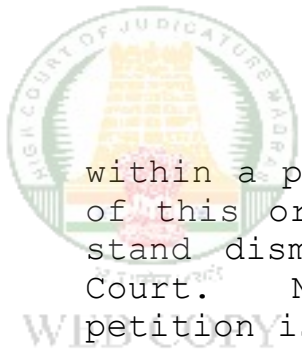
6. The trial Court after observing the contention raised on either side, has given a finding that the reason stated by the defendant to condone the said delay, was not reasonable and hence, the trial Court dismissed the said I.A.,

7. Heard the learned counsel on either side.

8. The petitioner herein/defendant contended that when the matter was taken up for hearing, he could not appear before the trial Court because of that he was not in a position to convey his counsel and the Court below has passed an ex parte order and thereafter, when the notice was received on the execution proceedings, the defendant came to about the ex parte decree and thereafter, for the purpose of filing a petition to set aside the ex parte decree, the delay of 394 days occurred. Hence, the said I.A. The trial Court after considering the observation made on either side, dismissed the said I.A. Aggrieved by the said dismissal, the present Civil Revision Petition has been filed.

9. Now, the petitioner herein/defendant says that he is having a good case and the ex parte order has to be set aside. On hearing both and on perusal of records, it is observed that the said suit filed for recovery of money ie., Rs.2,00,000/- from the defendant based on a pro note and the said suit was also decreed by giving sufficient opportunity to the defendant and the said E.P., was also filed for recovery of money ie., Rs.3,26,209/-.

10. In view of the fact that since the trial Court has dismissed the said I.A., with a view to give an opportunity to the defendant this Court allowed this Civil Revision Petition on condition that the petitioner herein/defendant shall deposit the said amount, ie., Rs.3,26,209/- to the credit of E.P.No.140 of 2016 on the file of the learned Subordinate Judge, Kulithalai



within a period of four weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall stand dismissed automatically without further reference to this Court. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

mm

To

The Subordinate Judge,
Kulithalai, Karur District.

+ 1 CC TO Mr.G.Vidhya Maheswaran, ADVOCATE IN SR No.64331
+ 2 CC TO Mr.M.Bindran, ADVOCATE IN SR Nos.64391 & 64528

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