



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2019
(Reserved on 20.03.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.1451 of 2011

and

M.P(MD)No.1 of 2011

T.R.Samraj

... Petitioner

vs.

1)V.Thulasimani

2)Minor V.Balamurugan

3)Minor V.Jegathguru

(Respondents 2 & 3 are represented by
their mother 1st respondent)

... Respondents

Petition filed under Article 227 of the Constitution of India,
against the fair and decreetal order made in I.A.No.142 of 2008 in
O.S.No.18 of 2003 by the Sub Court, Palani, dated 22.06.2011.

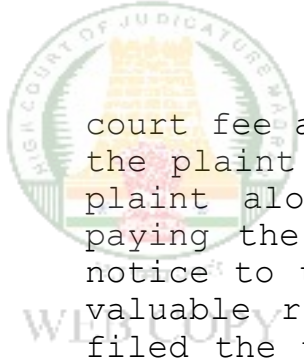
For Petitioner	: Mr.D.Venkatesh
For Respondents	: Mr.V.Thulasimani

ORDER

This Civil Revision Petition is filed against the fair and
decreetal order made in I.A.No.142 of 2008 in O.S.No.18 of 2003 by
the Sub Court, Palani, dated 22.06.2011.

2.The facts of the case are that originally, the revision
petitioner/defendant borrowed a sum of Rs.1,30,000/- from one
Venkatachalam, by executing a promissory note. The said
Venkatachalam as a plaintiff filed the above suit for recovery of
the above amount from the revision petitioner/defendant. Pending
suit, Venkatachalam died and his legal heirs/wife and minor children
were brought on record as plaintiffs 2 to 4 in the suit. After the
examination of plaintiffs' side witnesses, when the suit was posted
for cross examination, the revision petitioner/defendant filed the
present I.A to reject the plaint, which was dismissed by the Court
below, against which, this revision is filed.

3.Learned counsel for the revision petitioner/defendant would
contend that the suit promissory note is a fabricated one and that
the petitioner did not borrow any money from Venkatachalam. When
the plaint was presented on 14.02.2002, it was returned for want of



court fee and to comply with other defects, but without representing the plaint within the stipulated time, the plaintiffs presented the plaint along with petition to condone the delay of 279 days in paying the deficit court fee and the Court below without ordering notice to the petitioner, condoned the delay on terms, thereby, the valuable rights of the petitioner lost. Therefore, the petitioner filed the present I.A for rejection of plaint, but the Court below erroneously dismissed the same. Therefore, the learned counsel prays to set aside the impugned order. In support of his contentions, learned counsel for the petitioner relied on the following decisions:-

(i) B.S.Santhilal (deceased) vs. J.Samidurai reported in 2010-2-L.W.689.

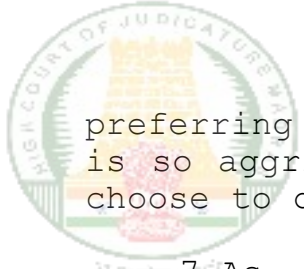
(ii) P.Sakthivel vs. Ponnusamy reported in (2007) 4 MLJ 433.

(iii) V.N.Subramaniam vs. A.Nawab John reported in (2007) 1 MLJ 669.

4. Learned counsel for the respondents/plaintiffs would contend that after entering appearance in the suit through counsel, the petitioner filed a petition to file additional written statement which was allowed and thereafter when the matter was posted for cross examination, without doing so, he filed a petition to refer the suit promissory note for comparison of signatures by the experts, in which, a commissioner was appointed and the petitioner did not co-operate with the commissioner and let the suit be decreed ex parte and thereafter filed a petition, in which, the ex parte decree was set aside. Having protracted the proceedings by filing petition after petition, now filing the present petition for rejection of plaint after a period of six years from the institution of the suit contending that he was not issued with notice in I.A.No.1187/02, thereby, his valuable rights of defence are lost and therefore, the plaint has to be rejected, is unjustifiable and the Court below has rightly dismissed the petition for rejection of plaint which does not require interference by this Court.

5. Heard both sides and perused the records.

6. Perusal of record shows that though originally the plaint presented was returned for want of court fee, the plaintiffs filed I.A.No.1187/02 to condone the delay in paying deficit court fee stating that they went to Kerala to give treatment to the deceased 1st plaintiff/Venkatachalam for his Asthma disease and therefore, they could not pay the court fee in time and the Court below also condoned the delay by imposing cost of Rs.750/- payable to the petitioner which shall be deposited to the credit of the suit account. On doing so, the suit was taken on file. Though the revision petitioner contended that since no notice was issued to him while allowing I.A.No.1187/2002 thereby his valuable rights of defence lost, it is not known what prevented the petitioner from



preferring revision against the allowing of I.A.No.1187/2002, if he is so aggrieved. But, in the present case, the petitioner did not choose to do so.

7.As rightly contended by the counsel for the respondents/plaintiffs, the petitioner filed petition after petition such as, petition to file additional written statement, petition for comparison of suit pro note signatures and petition to set aside the exparte decree passed against him, thereby protracted the proceedings. Having well known that I.A.No.1187/02 was allowed in 2003 without notice to him, without challenging the said order by way of revision within the time prescribed, now after six years, filing the present petition for rejection of the plaint taking the very same ground that since I.A.No.1187/02 was allowed without notice to him, his valuable rights of defence are lost, is unsustainable. Therefore, the judgments relied on by the petitioner are not applicable in view of the peculiar circumstances of the case. The learned Judge has rightly dismissed the petition for rejection of plaint which does not warrant interference at the hands of this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar()

To

The Sub Judge,
Palani.

+1. C.C. To Mr.D.Venkatesh Advocate SR.No.57519

C.R.P (PD) (MD) No.1451 of 2011
26.03.2019

TK/SAR- /10.04.2019/3P/3C