

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.4140 of 2019
and C.M.P.No.26982 of 2019

T.Sivakumar ...Petitioner

Vs

P.Selvaraj ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and final order passed in I.A.No.909 of 2018 in O.S.No.362 of 2017 on the file of the Sub-Court, Udumalpet, dated 15.07.2019.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.D.R.Arunkumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order passed in I.A.No.909 of 2018 in O.S.No.362 of 2017 dated 15.07.2019 on the file of the Sub-Court, Udumalpet.

2.The respondent herein has filed the suit in O.S.No.362 of 2017 for recovery of money.

3.Pending decree, the petitioner's father become ill and he frequently attending hospital for dialysis. Hence he could not be able to appear before the trial Court and on 24.04.2018 an exparte order has been passed against him. Therefore the petitioner herein has preferred the I.A.No.1011 of 2018 to cancel the exparte order made on 24.04.2018.

4.However, the trial Court dismissed the I.A.No.1011 of 2018, on the ground that the petitioner has to file his written statement along with the petition to dismiss the exparte order.

5.Aggrieved against the order of the trial Court in I.A.No.1011 of 2018, dated 15.07.2019, the petitioner has preferred the present Civil Revision Petition.

6.The learned counsel for the revision petitioner submitted that petitioner is the defendant in the suit in O.S.No.362 of 2017 filed by the plaintiff/respondent for recovery of amount for Rs.9,76,000/- based on the pronote dated 04.02.2016. In that case the defendant did not appear before the Court and not filed the written statement so that an ex-parte order was passed on 24.04.2018. The defendant did not appear before the Court since he was taking treatment for kidney problem and underwent dialysis. After completing his treatment he met his counsel and he informed that an exparte order was passed against him and therefore he gave power to his son Jayasurya and filed an application to set aside the ex-parte order. Which was dismissed by the trial Court on the ground that while filing an application to set aside the ex-parte order, the defendant failed to file the written statement. The order of the trial Court is unjust. The suit is based on pronote and the defendant is not liable to pay any amount. Therefore, he should be given with a chance to contest the case and pleaded to set aside the ex-parte order and to allow the Revision Petition.

7.Learned counsel for the respondent supported the order of the

trial Court and pleaded to dismiss the Civil Revision Petition.

8.Heard learned counsel for both the partiesand perused the materials available on record.

9.On perusal of records it is found that plaintiff filed suit against the defendant for recovery of amount based on pro-note dated 04.02.2016. In that case the defendant did not appear before the Court and failed to file written statement. So that an ex-parte order is passed on 24.04.2018. At this stage the defendant contacted the counsel and immediately filed an application to set aside the ex-parte order. Non appearance before the trial Court is only because he underwent dialysis due to kidney problem. He filed the medical records to show that he underwent for medical treatment. The trial Court dismissed the petition on the ground that the petition is not accompanied with written statement. The petitioner approached the Court with reasonable cause that he underwent for dialysis due the kidney problem. Non appearance of the petitioner was neither malafide nor intentional.

10.Under these circumstances, I am inclined to allow this Civil Revision Petition with a direction to the petitioner herein to file written statement within a period of two weeks from the date of receipt of a copy of this order and proceed the case without any delay.

11.In the result, order passed in I.A.No.909 of 2018 in O.S.No.362 of 2017 dated 15.07.2019 on the file of the Sub-Court, Udumalpet, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

07.12.2020

Index: Yes/No

Speaking Order: Yes/No

Jer/vsn0

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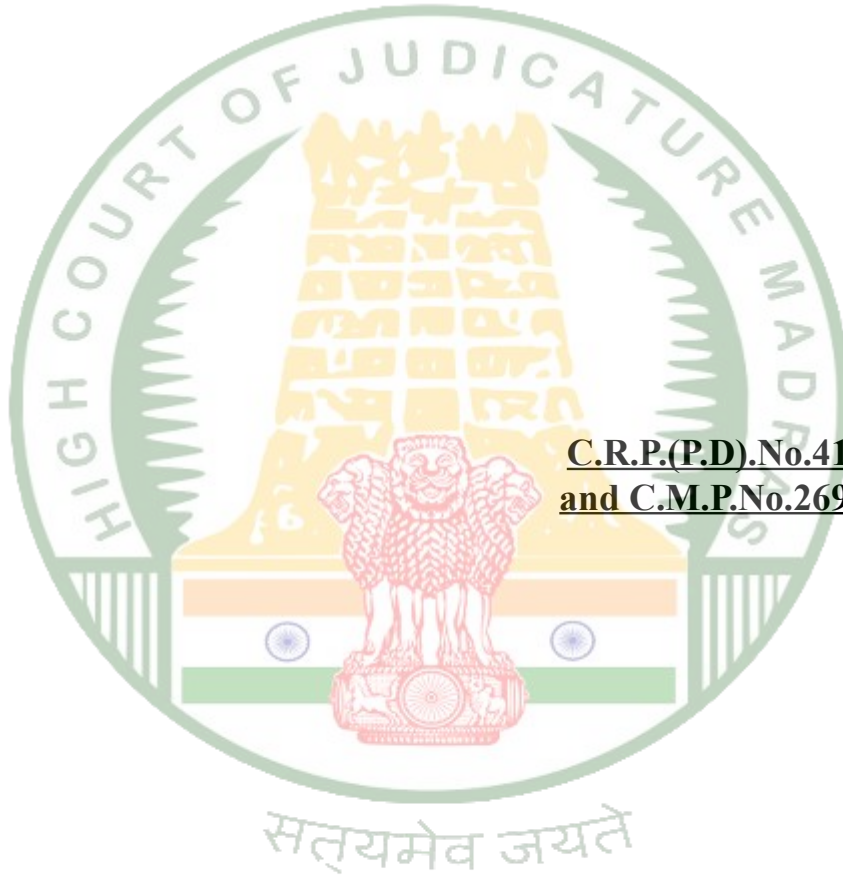
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To
The Sub Court
Udumalpet.

C.R.P.(P.D).No.4140 of 2019

V.SIVAGNANAM.J,

Jer/vsn



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