



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P.NPD (MD)No.1129 of 2012

and

M.P. (MD) No.1 of 2012

WEB COPY

K.Thangavel

: Petitioner/Appellant/
Petitioner/Defendant

Vs.

K.Kathirvel

: Respondent/Respondent/
Respondent/Plaintiff

PRAYER: Civil Revision Petition under Section 115 of CPC, against the Fair and decreetal order dated 28.02.2012 passed in C.M.A.No.22 of 2010 on the file of Additional Sub Court, Karur confirming the Fair and Decreeetal Order dated 02.07.2009 passed in I.A.No.1065 of 2008 in O.S.No.450 of 2004 on the file of the Additional District Munsif Court, Karur.

For Petitioner

: Mr.D.Nallathambi

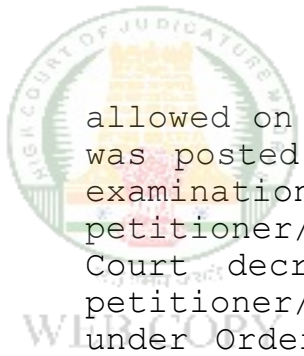
For Respondent

: Mr.V.Balaji

O R D E R

Mr.Thangavel, defendant in a money suit filed by the respondent/ plaintiff has come to this Court with this Civil Revision Petition challenging the impugned Fair and decreetal order dated 28.02.2012, passed in C.M.A.No.22 of 2010 on the file of Additional Sub Court, Karur, confirming the Fair and Decreeetal Order dated 02.07.2009, passed in I.A.No.1065 of 2008 in O.S.No.450 of 2004 on the file of the Additional District Munsif Court, Karur.

2.It is the claim of the respondent/plaintiff that the petitioner/ defendant borrowed a sum of Rs.50,000/- from him on 18.06.2000 by executing a promissory note, agreeing to repay the same with interest. As there was delay and default in repaying the money, the respondent/ plaintiff filed a civil suit and that was numbered as O.S.No.114 of 2001 on the file of the Sub Court, Karur. Subsequently, due to the enhancement of the jurisdiction of the District Munsif Court, the suit was transferred to the Additional District Munsif Court, Karur and renumbered as O.S.No.450 of 2004. The petitioner/defendant was set exparte for his failure to file written statement. However, the petitioner/defendant filed an application in I.A.No.1094 of 2002 under Order 9, Rule 7 of the Code of Civil Procedure to set aside the exparte and that petition was



allowed on 22.06.2004. Subsequently, issues were framed and the case was posted for trial. When the case was posted on 14.02.2005, for examination of P.W.1, learned counsel appearing for the petitioner/defendant reported no instruction. Therefore, the trial Court decreed the suit exparte on 14.02.2005. Once again, the petitioner/defendant filed an application in I.A.No.762 of 2006 under Order 9 Rule 13 of the Code of Civil Procedure to set aside the exparte decree passed against him. Two more applications were filed to condone the delay in representing the application to set aside the exparte and the said petitions were allowed. Subsequently, I.A.No.762 of 2006 was allowed on payment of a cost of Rs.750/- with the further condition that the defendant must be ready to proceed with the case, on setting aside the exparte decree. Again the case was posted for the cross examination of P.W.1 on 22.01.2007. Again, the petitioner/ defendant was called absent. Therefore, on his failure to cross-examine P.W.1, the petitioner/defendant was set exparte and an exparte decree was passed on the third occasion on 22.01.2007. To set aside the said exparte decree, the petitioner/defendant filed I.A.No.1065 of 2008 and the same was dismissed on 02.07.2009. Challenging the same, he filed C.M.A.No.22 of 2010 on the file of the Additional Sub Court, Karur. The same was dismissed, confirming the order of the trial Court. Challenging, the same, the petitioner/defendant has filed this Civil Revision Petition.

3.This Court considered the rival submissions and perused the materials available on record.

4.Perusal of the documents would show that on three occasions viz., on 10.10.2002, 14.02.2005 and 22.01.2007 the petitioner/defendant was set exparte, in addition to setting exparte in two interlocutory applications before the trial Court. This shows the intention of the petitioner/defendant to some how or other to protract the money suit. Hence, the trial Court having found that there is no document to show that the petitioner was not well on 22.01.2007, dismissed the application in I.A.No.1065 of 2008 filed under Order 9, Rule 13 C.P.C. The said order was confirmed by the learned Additional Subordinate Judge, Karur in C.M.A.No.22 of 2010.

5.Learned counsel appearing for the petitioner/defendant would submit that while entertaining an application filed under Order 9, Rule 13, the Court should not look into the past conduct of the parties and it should only look into the present conduct of the parties. By placing reliance on the judgment of the Hon'ble Apex Court in ***G.P.Srivastava v. R.K.Raizada* [AIR 2000 SC 1221]** the learned counsel would submit that in the above decision, it is mentioned that if 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when exparte proceedings initiated against him, he cannot be penalised for his previous negligence, which had been overlooked and condoned earlier. Therefore, the exparte decree passed on 22.01.2007, although it was

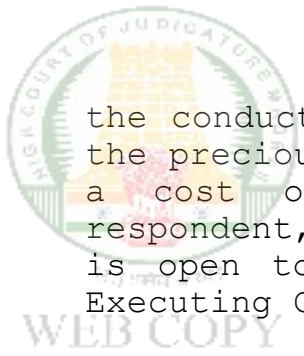


for the third time, should also be condoned and the suit should be restored back to file.

6.This Court could hardly find any iota of merits on the submissions made by the learned counsel appearing for the petitioner/defendant for several reasons. Firstly, when the respondent/plaintiff filed the suit in O.S.No.114 of 2001 for recovery of Rs.50,000/- from the petitioner/ defendant on the basis of the promissory note, the petitioner/defendant has not chosen to file written statement within 90 days, therefore, he was set exparte on 10.10.2002. Thereafter, he filed an application to set aside the exparte decree in I.A.No.1094 of 2002 and the same was allowed on 22.06.2004, setting aside the exparte decree. Secondly, when the matter was taken up for trial and the suit was posted for cross-examination of P.W.1 on 14.02.2005 for the second time he remained exparte. Again he filed an application in I.A.No.762 of 2006 to set aside the exparte decree with delay condone petitions. The same was allowed on payment of a cost of Rs.750/- with the further condition that the petitioner must be ready to proceed with the case. Thirdly, when the case was again posted for cross-examination of P.W.1 on 22.01.2007, the petitioner/defendant remained absent and he was set exparte. When the petitioner filed I.A.No.1065 of 2008 under Order 9, Rule 13 of C.P.C., the trial Court has come out heavily against the petitioner saying that inspite of giving opportunities, the petitioner is not cooperating with the Court and that shows the intention of the petitioner to protract the case as long as possible and the Court cannot be generous to one party to the suit. Saying so, the trial Court has rightly dismissed the petition and the same was confirmed by the learned Additional Subordinate Judge, Karur. Since the suit was instituted in the year 2001, the trial Court cannot entertain the application filed under Order 9 Rule 13 C.P.C. to set aside the exparte decree for the third time. The decision of the Hon'ble Apex Court in **G.P.Srivastava** case (supra) is not applicable to the case on hand since the petitioner/defendant remained exparte twice when the case was posted for cross-examination of P.W.1 and no evidence has been produced to show that he was not well on 02.07.2009 and the Court cannot always be generous to one party. In view of the above, the Civil Revision Petition is liable to dismissed.

7.Accordingly, the Civil Revision Petition is dismissed. Consequently connected Miscellaneous Petition is also dismissed.

8.The petitioner borrowed a sum of Rs.50,000/- from the respondent on 18.06.2000 and executed a promissory note. However, he has not come forward to pay the money to the respondent. Hence, the respondent has filed the suit for recovery of money. The petitioner remained exparte for the third time. Consequently, an exparte decree was passed. He has not complied with the exparte decree. He is protracting payment of the money for nearly two decades. This is a typical case, where this Court could see the petitioner is misusing the provisions of Order 9 Rule 13 C.P.C. Therefore, considering



the conduct of the petitioner in protracting the matter and wasting the precious time of this Court, this Court is constrained to impose a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent, in addition to the amount payable as per the decree. It is open to the respondent to recover the said amount through the Executing Court.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

sj

To

1.The Additional Subordinate Judge,
Karur.

2.The Additional District Munsif,
Karur.

+1 CC to Mr.V.BALAJI, Advocate (SR-152[F] dated 03/01/2020)

**CRP (NPD) (MD)No.1129 of 2012
02.01.2020**

VB(11.02.2020) 4P 4C