



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (MD)No.169 of 2020

and

C.M.P. (MD)No.988 of 2020

and

CAVEAT (MD)No.2421 of 2019

M/s.Bharath Scans Private Limited,

Through its Managing Director,

Dr.R.Immanuel Gunaseelan,

Door No.197, Peter's Road,

Rayapettah, Chennai-14.

...Petitioner / Petitioner / Defendant

-Vs-

1.Thajunissa

2.Noorunissa

...Respondents / Respondents / Plaintiffs

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair order and decreetal order passed in I.A.No.7 of 2019 in O.S.No.162 of 2017 dated 28.11.2019 on the file of the IV th Additional District Court, Tirunelveli.

For Petitioner : Mr.S.Meenakshi Sundaram,
Senior Counsel,

For Mr.N.GA.Natraj

For Respondents No.1: Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed against the fair and decreetal order of the Court below, dismissing the application filed to condone the delay of 119 days in filing the application to set aside the ex-parte decree.

2.It is the contention of the revision petitioner that though summons were served, the same was mingled with other papers. Therefore, he could not appear before the Court and ex-parte decree has been passed. Only in the execution proceedings, he came to know that ex-parte decree was passed and there was a delay of 119 days occurred. It is the further contention that the suit has been filed for eviction of the defendant from the suit property and for arrears of rent. The suit property is hypothecated in Tamil Nadu Mercantile Bank. Unless liberty is given to the petitioner to contest the suit on merits, he will put into irreparable loss. The respondents have filed counter that even after receipt of summons, in order to drag on the



proceedings, the defendant did not appear and there is no sufficient reason, hence, prayed for dismissal of the application. The trial Court having regard to the rival contentions, has dismissed the application.

WEB COPY

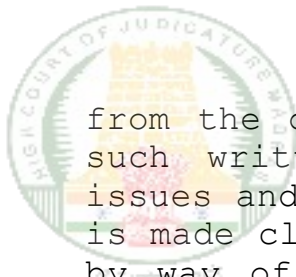
3.The learned counsel appearing for the petitioner submitted that even during the execution petition, Rs.22,00,000/- (Rupees Twenty Two Lakhs Only) has been paid towards arrears of rent and submitted that to show his bona fide, he is also ready to deposit the admitted arrears amount from 21.01.2019 till today (31.01.2020) and a chance may be to contest the suit on merits.

4.The learned counsel appearing for the respondents submitted that if the admitted arrear amount is paid, they have no objection to set aside the ex-parte decree and also prayed for a direction to the trial Court to dispose of the suit expeditiously.

5.The suit has been filed for recovery of possession and for arrears of rent. It is not disputed by both sides. During the pendency of the execution proceedings, substantial amount is also paid. It is the contention of the respondents that from 21.01.2019, admitted arrears has not been paid. It is the further contention that the monthly rent is Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand Only) per month, whereas it is the contention of the learned counsel appearing for the revision petitioner that admittedly the monthly rent is only Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand Only) per month. However, it is contended that if the admitted arrears as contended by the respondents is Rs.3,50,000/- and paid by the revision petitioner earlier, such admitted amount will be deposited in the Court.

6.Having regard to the fact that the suit itself decreed as ex-parte and there was a delay of 119 days, this Court is of the view that the substantial right of the party cannot be defeated and accordingly, as admitted by the revision petitioner, he is directed to deposit the admitted arrears from 21.01.2019 to 31.01.2020 before the trial Court, within a month from the date of receipt of a copy of this order.

7.In view of the above, this Court extends discretion giving liberal approach in order to give fair opportunity to the parties to establish the substantial right and the delay is condoned and the order of the trial Court is set aside. The revision petitioner shall file written statement within one month



from the date of receipt of a copy of this order. On filing of such written statement, the trial Court shall frame necessary issues and dispose of the suit, thereafter, within six months. It is made clear that the quantum of rent and arrears to be deposited by way of the order of this Court will not have bearing in the main suit. The quantum of arrears has to be independently decided on merits. In the event of failure to comply with the directions to deposit the arrears, the defendant will not have any right of defence in the suit.

8.In the result, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous and caveat petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Myr

To

1.The IV th Additional District Judge,
Tirunelveli.

2.The Section Officer,-2 copies
V.R. Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-4433[F] dated 03/02/2020)

+1 CC to Mr.N.GA.NATRAJ, Advocate (SR-4575[F] dated 04/02/2020)

C.R.P (MD) No.169 of 2020
31.01.2020

_KM/ (17.02.2020) 3P 6C