



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

WEB COPY

C.R.P. (NPD) (MD) No.84 of 2019
and
C.M.P. (MD) No.427 of 2019

Sri Ram Chit Tamilnadu (Pvt) limited,
Chit Company through its
Branch Manager,
1st Floor, J.K.Complex No.3,
Manakavalam Pillai Hospital Road,
Palayamkottai,
Tirunelveli - 627002.

.. Petitioner / Respondent /
Defendant / Judgment Debtor
Vs.

K.Gomathi

.. Respondent / Petitioner /
Plaintiff / Decree Holder

Prayer: This Civil revision petition is filed under Section 115 of Civil Procedure Code, to set aside petition order passed in E.P.No.84 of 2014 in O.S.No.435 of 2012 on the file of the District Munsif Court, Tirunelveli dated 26.10.2018.

For Petitioner : Mr.J.Jeyakumaran
For Respondent : Mr.T.Selvan

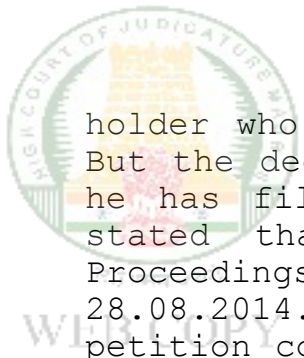
ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in E.P.No.84 of 2014 in O.S.No.435 of 2012 dated 26.10.2018, on the file of the learned District Munsif, Tirunelveli.

3.The petitioner herein is the judgment debtor and the respondent herein is the decree holder. The respondent has filed a money suit in O.S.No.435 of 2012 and an exparte order was passed in the suit. The decree holder has filed E.P.No.84 of 2014 and an order of attachment was passed on 26.10.2018. Against which, the petitioner has come forward with the present revision petition.

4.On the side of the petitioner, it is stated that the petitioner did not receive any summons in the original suit and an exparte decree was passed without the knowledge of the petitioner. It is stated that the petitioner was running a chit fund. The decree



holder who is a member of the chit fund, paid only one month due. But the decree holder claims that he has paid eight months due and he has filed the suit and got an exparte decree. It is further stated that the petitioner has received notice in the E.P. Proceedings and the petitioner filed a set aside petition on 28.08.2014. The petition was neither numbered nor returned. The petition copy was misplaced by the Court. When a complaint was made to the learned Principal District Judge, the petitioner was advised to file another interlocutory application. On that advice, the petitioner filed another interlocutory application with a condone delay petition. The petition was numbered as I.A.No.1 of 2019 and is pending 'for orders'.

5.On the side of the respondent, it is stated that section 5 petition was already dismissed and that particulars were given to the petitioner and that the suit is of the year 2012. The defendant was set exparte on 06.09.2013. No appeal was filed and that there is no evidence to show the petition to set aside the exparte decree was filed.

6.On the side of the petitioner, it is stated that decree amount was already deposited, as per the orders of this Court dated 13.06.2019. It is stated that I.A.No.1 of 2019 is posted 'for orders' on 05.02.2020.

7.It is seen that interlocutory application to condone the delay of filing of the set aside the exparte order is numbered and pending 'for orders' . The contention of the petitioner is that the earlier petition filed by the petitioner to set aside the exparte decree was misplaced by the Court and he was advised to file another petition. The petitioner fairly admits that decree holder paid one month due for the chit.

8.In the above circumstances, executing the decree will merely affects the rights of the petitioner in I.A.No.1 of 2019. Hence, this Civil Revision Petition is allowed and the order passed in E.P.No.84 of 2014 in O.S.No.435 of 2012 dated 26.10.2018, on the file of the learned District Munsif, Tirunelveli is set aside. The respondent is at liberty to file fresh execution petition, if I.A.No.1 of 2019 is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The District Munsif, Tirunelveli.

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-4804[F] dated 05/02/2020)

C.R.P. (NPD) (MD) No.84 of 2019
04.02.2020

Mrn

SDS (19.02.2020) 3P-3C