



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM:

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THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (NPD) (MD)No.2457 of 2018

&CMP(MD) .Nos.10908 & 10909 of 2018

Rev.K.Samuel

... Petitioner/Petitioner/Defendant

Vs.

David Bright Singh

... Respondent/Respondent/Plaintiff

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.10.2018 made in I.A.No.123 of 2018 in O.S.No.39 of 2016 on the file of the Principal District Judge, Nagercoil.

For Petitioner : Mr.Sharath Chandran for
Mr.M.Ashok Padma Raj

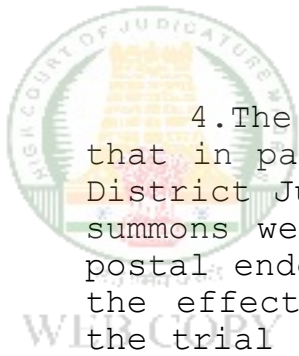
For Respondent : Mr.K.N.Thambi

ORDER

The present Civil Revision Petition is filed challenging a condition imposed by the trial Court on the revision petitioner/defendant while allowing a petition in I.A.No.123 of 2018 in O.S.No.39 of 2016 to condone the delay in filing the petition to set aside the ex-parte decree.

2.The brief facts are that the respondent/plaintiff has laid a suit on a promissory note for recovery of Rs.30,00,000/- with interest, which he is said to have advanced to the revision petitioner/defendant, that the defendant was set ex-parte and an ex-parte decree was passed on 22.10.2018. Thereafter, the plaintiff has laid E.P.No.146 of 2017 for executing the said decree and the notice in the E.P.No.146 of 2017 was served on the revision petitioner. No sooner, he filed a petition to set-aside the ex-parte decree along with an application to condone the delay of 439 days.

3.On a specific question, this Court was informed that the written statement too has been filed along with I.A.No.123 of 2018.



4.The learned counsel for the revision petitioner submitted that in paragraph no.6 of the impugned order, the learned Principle District Judge, Kanyakumari at Nagercoil has indicated that the suit summons were not served on the revision petitioner/defendant and a postal endorsement is there returning the private notice ordered to the effect that the defendant has refused it. More appropriately, the trial Court has not considered it, since the said statement has not been proved by examining the postman who went to serve the notice. However, the trial Court has taken a view that inasmuch the revision petitioner has received the notice in the Execution Petition in the same address, it presumed that he might have evaded notice on the earlier occasion. Taking into consideration the above factors, the trial Court allowed the petition to condone the delay of 439 days but, on a condition that the revision petitioner/defendant deposits Rs.10,00,000/-, which is 1/3rd of the principal sum involved in the suit. This is now in challenge.

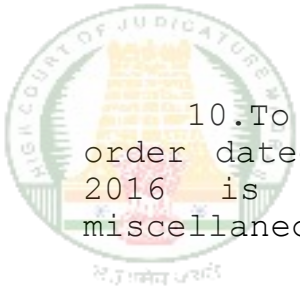
5.The learned counsel for the revision petitioner argued that when the suit summons were not served in the manner contemplated, this Court ought to have ordered a paper publication in terms of Order 5 Rule 20 C.P.C. He also relied on the Authorities reported in (1970) 83 LW 137(FB), 2007 5 CTC 847 and AIR 1960 MP 234 DB for this purpose.

6.Mr.K.N.Thambi, learned counsel for the respondent/plaintiff submitted that the revision petitioner was in the habit of evading notice. Even he evaded the suit notice and so also evaded the suit summons. Thus, taking these factors into consideration, the trial Court has appropriately inferred that the revision petitioner/defendant might be in the habit of evading notice and has justly imposed the condition.

7.While a party may err, the Court shall not. Here, what is alleged is that no paper publication has been ordered by the Court. When procedural flaw by the Court denies the defendant a right to defend the action, necessarily, the *actus curiae navinum gravabit* will come to play. Therefore, it is only appropriate that the revision petitioner is relieved of the burden imposed by the trial Court.

8.The learned counsel for the respondent/plaintiff would now urge that the respondent might be without any security, even if the money is not allowed.

9.The learned counsel for the respondent/plaintiff need not be informed that there are provisions in Civil Procedure Code that enable him to obtain pre-decree security for the money that may become payable under the decree to be passed against the revision petitioner/defendant.



10.To conclude, this Civil Revision Petition is allowed and order dated 22.10.2018 made in I.A.No.123 of 2018 in O.S.No.39 of 2016 is set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge ,Kanyakumari at Nagercoil.

2.The Section Officer (2 copies)
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M. ASHOK PADMARAJ, Advocate (SR-23749[F] dated 02/12/2020)

+1 CC to Mr.K.N.THAMBI, Advocate (SR-23423[F] dated 01/12/2020)

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