



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.(PD)(MD)Nos.604 and 605 of 2017

and C.M.P.(MD)No.2695 of 2017

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Selvaraj ... Petitioner in both petitions

vs.

Dhanalakshmi ... Respondent in both petitions

COMMON PRAYER: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.Nos.583 and 582 of 2016 in I.A.No.843 of 2015 in O.S.No.236 of 2010 dated 22.11.2016 on the file of the Additional Sub Court, Tirunelveli by allowing these civil revision petitions.

For Petitioner : Mr.Robert Chandrakumar
For Respondent : Mr.J.Imran khan
for Mr.T.S.Mohamed Mohideen

COMMON ORDER

These civil revision petitions have been filed by the defendant in O.S.No.236 of 2010.

2. The said suit was filed by the plaintiff seeking preliminary decree on a mortgage executed by the defendant for a sum of Rs.2,00,000/- on 31.01.2000 claiming that she is entitled to interest at the rate of 24% per annum. The plaintiff had claimed that total amount of Rs.5,60,000/- is due in the suit. The suit came to be decreed ex-parte on 07.01.2014.

3. The defendant had filed an application in I.A.No.843 of 2015 with a delay of 236 days in filing an application to set aside the ex-parte decree. By an order dated 01.08.2016, the trial Court allowed the application in I.A.No.843 of 2015 subject to the condition that the defendant pays a cost of Rs.1,250/- to the Legal Aid Centre on or before 10.08.2016. The said amount was not paid and hence, the application in I.A.No.843 of 2015 was dismissed for non compliance with the conditional order passed on 01.08.2016. Almost immediately as on 12.08.2016, the defendant filed two applications in I.A.Nos.582 and 583 of 2016 seeking extension of time for payment of costs and to set aside the order dismissing I.A.No.843 of 2015 for not complying with the said condition. Those two applications were dismissed by the trial Court on 22.11.2016.



Aggrieved, the defendants / petitioner has come up with these revision petitions.

4. I have heard Mr.Robert Chandrakumar, learned counsel for the petitioner and Mr.Imran Khan, learned counsel for the respondent.

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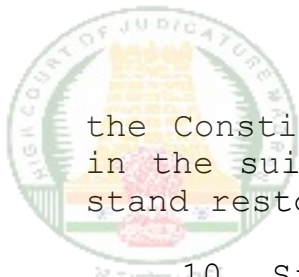
5. It is not in dispute that petition under Section 148 of the Civil Procedure Code seeking extension of time was filed almost immediately. The trial Court, however found that there was negligence on the part of the defendant in prosecuting the suit. According to the trial Court, the said negligence would disentitle the defendant seeking indulgence of the Court for extension of time under Section 148 C.P.C. On the said reasoning, the trial Court dismissed I.A.Nos.582 and 583 of 2016.

6. I find that the order of the trial Court is not just and legal. One can understand the anxiety of the trial Court to ensure speedy disposal and at the same time the defendant should also be given fair chance to contest the proceedings, particularly, when the claim is for interest at 24% per annum that too on a compounded basis. The defendant in his written statement has admitted the execution of mortgage and borrowing. It is only the rate of interest that is being disputed by him. I find that this is a fit case, where the defendant should be given an opportunity, more so when he wants to defend the suit with regard to the quantum of interest alone. He has also moved an application for extension of time, the very next day i.e., on 12.08.2016. I am therefore of the considered opinion that the orders of the trial Court in rejecting the applications filed under Section 148 of the Code of Civil Procedure and under Order 9 Rule 9 and Section 151 of the Code of Civil Procedure are materially irregular and it deserves to be set aside.

7. It is useful to mention that the Hon'ble Supreme Court in the case of **University of Delhi Vs. Union of India** [2019 SCC Online SC 1634] had held that the Court should have pragmatic approach in the matters of condonation of delay. The Hon'ble Supreme Court has also referred to the earlier judgments, and indicated the kind of approach that should be adopted in matters relating to condonation of delay and setting aside ex-parte decree.

8. In view of the above judgment, I am satisfied that the defendant / petitioner should be given a chance to conduct the suit. Hence, these orders dated 22.11.2016 made in I.A.Nos.582 and 583 of 2016 are set aside and these two applications stand allowed.

9. The learned counsel for the petitioner has paid a cost of Rs.1,250/- to the learned counsel for the respondent. Such payment is recorded and I.A.No.843 of 2015 will stand allowed. Taking into account the long pendency, I excise the power under Article 227 of



the Constitution of India and set aside the ex-parte decree passed in the suit dated 07.10.2014. The suit in O.S.No.236 of 2010 will stand restored to file.

10. Since I found that the proceedings in the suit have been unnecessarily delayed due to the pendency of the above civil revision petitions and the defendants had in fact admitted borrowing of Rs.2,00,000/-, I had directed the learned counsel for the defendant to pay the principal sum of Rs.2,00,000/-. As per the said direction, the learned counsel for the defendant has handed over the demand draft for a sum of Rs.2,00,000/- to the learned counsel for the respondent. Such payment is recorded.

11. It is made clear that this payment will be subject to the result of the suit and it shall be adjusted first towards interest that is found to be payable by the petitioner as it is done in matters relating to payments under a money decree. With the above observation, these civil revision petitions are allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

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Sub Assistant Registrar(CS)

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To

The Additional Sub Court, Tirunelveli

+1.CC. To MR.G.Prabhu Rajadurai, Advocate in SR No.1296

+1.CC. To Mr.T.S.Mohamed Mohideen, Advocate in SR No.1099

C.R.P. (PD) (MD) Nos. 604 and 605 of 2017

09.01.2020

(2/2)

MK (24.02.2020) 4P 4C