

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.NO.178 OF 2021

AND

C.M.P.NO.1646 OF 2021

J.Mohammad Hussain
S/o.Zainulabideen

... Petitioner

Vs

M.Abusali
S/o.Moideen

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 07.02.2020 passed in I.A.No.02 of 2019 in O.S.No.35 of 2018, pending on the file of the learned Principal District Judge, Kancheepuram, Chengalpattu.

For Petitioner : Mr.A.Prabhakaran

O R D E R

The present petition has been filed to set aside the fair and decreetal order dated 07.02.2020 passed in I.A.No.02 of 2019 in O.S.No.35 of 2018, pending on the file of the learned Principal District Judge, Kancheepuram, Chengalpattu.

2. The case of the petitioner is that the petitioner herein is the respondent/defendant in the suit in O.S.No.35 of 2018, which was filed for recovery of a sum of Rs.10,11,309/- with subsequent interest from the date of plaint till the date of actual payment of the same. The case had been posted to 09.04.2019 for filing of written statement by the defendant and since the defendant has not chosen to appear before the Court below on the said date, he was called absent and set ex-parte. Now, the petitioner has come with the present petition against the ex-parte order.

3. The learned counsel for the petitioner would submit that the fair and decreetal order passed by the trial Court dismissing the application filed under Order IX, Rule 7 CPC is contrary to law. The Court below, without taking into consideration of the application filed for rejection of plaint in I.A.Sr.No.255 of 2019, held that the petitioner/defendant, only to drag on the proceedings, remained ex-parte and filed petition to set aside the ex-parte order passed, without written statement. He would further submitted that the Court below has not countenanced the bonafide of the petitioner in contesting the suit effectively, by filing application for rejection of plaint by invoking provisions under Order 7 Rule 11 CPC. The Court below, on erroneous assumption of powers, held that the petitioner negligently failed in availing the opportunity afforded by the Court in filing the written statement. Further, he would contend that the application filed by the petitioner for rejection of plaint is returned, neglected to take consideration that the application was represented and the same was returned only on 07.07.2020, when the present application in I.A.No.2 of 2019 was dismissed. The findings rendered by the Court below are devoid of merits and not based upon any sound principles of law. Hence, the learned counsel for the petitioner seeks permission of this Court to allow this petition.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. On going through the entire materials, the suit was filed by the respondent/plaintiff for recovery of money directing the defendant to pay a sum of Rs.10,11,309/- with subsequent interest at 24% per annum of Rs.8,95,000/- from the date of plaint till the date of realization. In the suit, summons were served on the petitioner and he has filed vakalat. The petitioner did not file his written statement before the Court below. Hence, the Court below has passed the order of ex-parte on 09.04.2019. The petitioner had filed the I.A.No.2 of 2019 seeking for setting aside the ex-parte order passed by the Court below. After considering the petition and the counter filed by the plaintiff, the Court below had dismissed the said application on the ground that the petitioner/defendant has not filed any written statement.

6. It is seen from the adjudication orders, the suit summons were served on the defendant and the defendant counsel has filed his vakalat on 05.06.2018. Thereafter, the matter was adjourned periodically on 03.08.2018, 30.10.2018, 03.12.2018, 09.01.2019, 18.01.2019, 18.02.2019 and on 09.04.2019 for filing written statement, whereas, even after sufficient opportunity provided by the Court below, the defendant did not file his detailed written statement. Hence, the Court below has passed the ex-

parte order. Without utilizing the opportunity given by the Court below, immediately, he filed the set aside petition only to drag on the suit proceedings without any valid reasons. The petitioner has filed the rejection of plaint application only on 09.03.2019, which was returned and represented on 08.03.2019 and again it was returned on 15.04.2019. The Court below has also stated that there was no mention regarding the same. The petitioner also has not let in any evidence to show that the said application was filed and the same was pending before the Court below and also the Court has come to the conclusion that the rejection of plaint does not show any of the contention laid down by law for rejection of plaint. The petitioner herein has not denied diligently for filing a written statement even before the Court below. The petitioner has not shown any valid reasons for setting aside the ex-parte order. The only point to be considered is that whether he has filed the rejection of plaint on 09.01.2019, within the time granted for filing the written statement. There is no other materials produced to show that he has not filed the written statement on time.

7. Even though, there is no valid reasons shown by the defendant before the Court below, on going through the typed set of papers, it is seen that he has filed a petition for rejection of plaint before the Court below and the same was not represented again and the petitioner has sought to represent the same within the said period and has not shown any bonafide interest to contest the same properly. As the suit is of the year 2018 and he has been set ex-parte on 09.04.2019, the petitioner has taken steps immediately to set aside the same.

8. This Court is inclined to give one more chance to the petitioner to contest his case in the interest of justice. The petitioner herein is directed to file his written statement within a period of two weeks before the Court below, from the date of receipt of a copy of this order and the Court below can accept the same and conduct the trial within a period of one year from the date on which the order copy is made ready. The petitioner is further directed to pay a sum of Rs.50,000/- to the plaintiff as cost within a period of four weeks.

9. In view of the above said reasons, this petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sbn

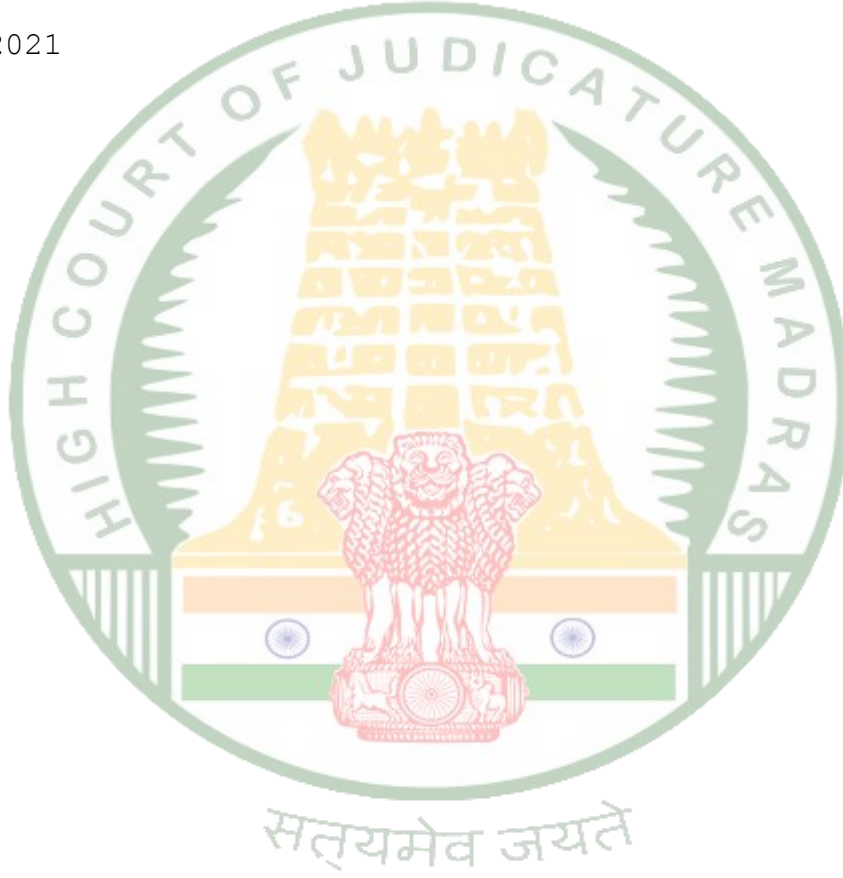
To

The Principal District Court,
Kancheepuram,
Chengalpattu.

+1cc to Mr.A.Prabhakaran, Advocate, S.R.No.7367

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and
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RLD(CO)
CS/16/06/2021



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