

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

**THE HON'BLE Ms. JUSTICE R.N.MANJULA**

C.R.P.(NPD).No.4549 of 2015

M.Thangamani ... Petitioner/Petitioner/1<sup>st</sup> respondent

Vs.

1.K.P.Subramani ... 1<sup>st</sup> respondent/Petitioner

2.K.P.Shanmugam

3.K.P.Duraisamy

4.L.R.Shanmugam

5.V.S.Mahadevan

6.P.Shanmugam

7.D.Gokulakrishnan ... Respondents 2 to 7/Respondents 2 to 7

***[R-2 to R-7 given up]***

**PRAYER :** The Civil Revision Petition filed under Section 115 of C.P.C. against the fair and final order dated 08.08.2015 in I.A.No.26 of 2013 in I.P.No.44 of 2009 on the file of II Additional Sub Court, Erode, as prayed for to set aside the same.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.I.C.Vasudevan [R1]

## **ORDER**

*(Heard through video conferencing)*

This Civil Revision Petition has been filed praying to set aside the fair and final order passed by the learned II Additional Sub-Judge, Erode, in I.A.No.26/2013 in I.P.No.44/2009 dated 08.08.2015.

2. The Civil Revision Petitioner is the petitioner in I.A.No.26 of 2013 and he is the first respondent in I.P.No.44 of 2009.

3. I.P.No.44 of 2009, has been allowed *exparte* on 19.08.2010. The revision petitioner had already filed a suit against the respondents in O.S.No.709 of 2002 for recovery of money and got a decree on 16.01.2005. Subsequently, he has filed the Execution Petition in E.P.No.167 of 2006 and the same was allowed. Aggrieved over that, the respondent has filed a C.R.P(NPD)No.38 of 2010 and that has been allowed on 12.03.2012. It was submitted by the petitioner that only at that point of time, he came to know about the institution of the Insolvency Petition filed by the respondent and that an *exparte* order was passed in the same. So he filed a petition to condone the delay of 712 days in filing the petition to set aside the *exparte* order. The

Court below dismissed the petition by stating that the petitioner had knowledge about the Insolvency Proceedings even during the year 2010 but he had chosen to take steps to set aside *exparte* order only in the year 2012 and no proper explanation has been given for condoning the delay of 2 years.

4. It is submitted by the learned counsel for the respondent that he had admitted in his affidavit filed in I.A.No.26 of 2013 that he had knowledge about the order passed in I.P.No.44 of 2009 on 19.08.2010 itself.

5. On perusal of the affidavit, it is seen that the petitioner has just alleged about the order passed in CRP on 19.08.2010 and he has not alleged that he came to know about the same on the same day itself. Had it been the case, he would have immediately filed a petition to set aside the *exparte* order passed in the Insolvency Petition since he was contesting C.R.P.(NPD)No.38 of 2010 which was pending before the High Court.

6. The Civil Revision Petitioner cannot be lightly estimated that he was not serious enough to contest any proceedings against him. Because the records would show that he was contesting the Civil Revision Petition filed against the order passed in the Execution Petition. If he had the knowledge of

the order passed in the Insolvency Petition, he would not have waited till the disposal of the Civil Revision Petition for filing the petition to set aside the *exparte* order.

7. It is further submitted that he could not get the notice served in I.P.No.44 of 2009 because his address was not given properly. Unfortunately, the other respondents who were shown as the creditors of the respondents in Insolvency Proceedings, also remained *exparte* and records would show that excepting this petitioner, all other creditors were not holding any decree of the Court.

8. In the event of the petitioner establishing before the Insolvency Court that the respondent has got enough means to meet the decree amount, there is a possibility that the petitioner could get the fruits of his decree. However, the petitioner did not give any satisfactory reason for the delay that caused from 12.03.2012, on which date CRP was disposed and on 27.08.2012 when the petition to condone the delay to set aside the *exparte* order was filed. The delay caused in filing the petition to set aside the *exparte* decree would have caused hardship to the respondents also. Hence, I feel that this revision petition can be allowed on terms.

9. In the result, the Civil Revision Petition is allowed on payment of cost of Rs.5,000/- to the respondent on or before two weeks from the date of receipt of a copy of this order. The cost may be deposited to the Lower Court account and which can be later payable to the first respondent. If the cost is not paid within the prescribed time limit, this petition will stand dismissed.

16.04.2021

Speaking  
Index : Yes  
Internet : Yes

*Sni*

***Note : Issue Order Copy on 19.04.2021***

To

1.The X Assistant Judge,  
City Civil Court,  
Chennai.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.

**R.N.MANJULA,J.**

**Sni**



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