IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.R.P.(NPD).No.2746 of 2018
and
Cmp.No.16135 of 2018

V.Krishnan ... Petitioner /Defendant

Versus

E.Vijayalakshmi ... Respondent/Plaintiff

Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the petition and order dated 28.06.2018 made in E.A.No.582 of 2018 in E.P. No. 2455 of 2017 in O.S. No. 476 of 2017 on the file of the IX-Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Prabhakar

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 28.06.2018 passed in E.A.No.582 of 2018 filed under Order XXI and Rule 106 of CPC., to set aside the ex-parte order dated 03.01.2018 made in E.P.No. 2455 of 2017 in O.S.No.476 of 2017 on the file of the IX-Assistant City Civil Court, Chennai.

2. The suit in OS No. 476 of 2017 was filed by the respondent herein for recovery of Rs.4,72,000/- with further interest. The suit was decreed exparte on 04.03.2017. To execute the exparte decree, EP No. 2455 of 2017 was filed. The Execution Petition was also ordered exparte on 03.01.2018.

3. While so, on 25.01.2018, the defendant/revision petitioner filed E.A.No.582 of 2018 in EP No. 2455 of 2017 under Order 21 Rule 106 of CPC seeking to set aside the exparte Order passed in the Execution Petition. The Plaintiff/decree holder

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filed a counter affidavit in E.A.No.582 of 2018 and stated that on notice in the Execution Petition, the defendant appeared through his counsel and stated that the above matter will be settled amicably. Therefore, this Court posted the case on 09.12.2017 before the Lok Adalat, but the defendant/Judgment Debtor did not appear.

4. The Court below on considering the submission of both sides, allowed EA No. 582 of 2018 subject to payment of 1/10 of the amount claimed in the Execution Petition namely 1/10th amount of Rs.5,24,741/- viz., Rs.54,274/- towards part settlement of the decree and also to pay Rs.1,500/- to the Honourable Chief Minister Relief Fund on or before 16.07.2018 failing which the petition will be dismissed. Aggrieved by the order dated 28.06.2018, the defendant/Judgment Debtor has filed this Civil Revision Petition.

5. The learned counsel for the revision petitioner submitted that the petitioner has filed an application in I.A.No.10874 of 2018, to condone the delay in filing the petition to set aside the exparte order and the delay was condoned in the month of March 2019. Now, the case is posted on 12.02.2021, to pass an order in the application to set aside the exparte decretal order passed in O.S.No.476 of 2017. The learned counsel for the revision petitioner contended that pending the I.A. No.10874 of 2018, the conditional order was passed in E.A.No. 582 of 2018, Further, he stated that the revision petitioner has got very good chance of succeeding in the suit. Under these circumstances, the conditional order passed in the Execution Application would cause prejudice to the revision petitioner/defendant in the event of dismissal of the suit filed by the plaintiff. Above all, by a subsequent order dated 25.07.2018, the trial court allowed the EP No. 2455 of 2018 and attached the properties of the revision petitioner/defendant. Therefore, he prayed for allowing this Civil Revision Petition.

6. Though notice was served to the sole respondent and his name is also printed in the cause list, none appeared on his behalf.

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7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. On a perusal of the record, it appears that the E.A.No. 582 of 2018 was pending from the year 2018, onwards. The said EA No. 582 of 2018 has been filed to set aside the exparte order passed in E.P.No.2455 of 2017 on 03.01.2018. While

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allowing the EA No. 582 of 2018, the trial court imposed condition to deposit 1/10th of the amount claimed in the Execution Petition besides payment of Rs.1,500/- as costs. When seeking to set aside the exparte order, the Execution Court ought not to have passed such an order, as the Court below has already condoned the delay for setting aside the exparte order passed in E.P.No.2455 of 2017 without any condition. The petitioner has also filed an I.A.No.10874 of 2018 to set aside the exparte decree in the suit. The petitioner submits that there is a chance for the petitioner to succeed in the suit as the petitioner has already filed a petition to set aside the exparte in the suit. Therefore, this Court is of the opinion that it would be appropriate to direct the Court below to dispose of I.A.No.10874 of 2018, in O.S.No.476 of 2017, and accordingly, this Court directs the Court below to dispose of the I.A.No.10874 of 2018, within a period of 30 days, from the date of receipt of a copy of the order. Until then, this Court stays all further proceedings in E.P.No.2455 of 2017.

9. With the above observations and directions, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

The IX-Assistant City Civil Judge, Chennai.

+1 cc to Mr.G.Prabakaran Advocate sr5301

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