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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2300 of 2020 and
C.M.P.No.14432 of 2020

Shantanu Prakash

... Petitioner

Vs.

1. Lenovo India Pvt., Ltd.,
Ferns Icons Level 2,
Doddenakundi village,
Marathahalli outer ring road,
Bangalore - 560 037

2. Educomp Solution Ltd.,
No.454, GNT Road Puzhal,
Chennai - 600 066

... Respondents

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908 to set aside the Impugned order dated 11.11.2019 made in I.A.No.211 of 2015 in O.S.No.8 of 2014 on the file of learned IV Additional District Judge, Thiruvallur @ Ponneri.

For Petitioner : Mr.Thriyambak J. Kannan

O R D E R

The present Civil Revision Petition has been filed against the fair and final order made in I.A.No.211 of 2015 in O.S.No.8 of 2014 dated 11.11.2019 by the learned IV Additional District Judge, Thiruvallur@Ponneri.

2. The factual matrix leading to the present case is that the 1st respondent herein filed O.S.No.8 of 2014, which is a Summary Suit before the learned Principal District Judge, Thiruvallur under Order 37 Rule 1 and 2 of the Code of Civil Procedure seeking for a direction to pay the 1st respondent a sum of Rs.1,86,36,050/- together with pendente lite interest at 2% per month from the date of overdue till the date of realisation.



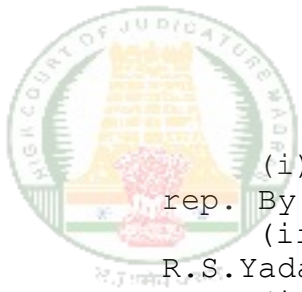
3. The petitioner and the 2nd respondent, who were the defendants in summary suit in O.S.No.8 of 2014 had filed I.A.No.59 of 2014 seeking to condone the delay of 10 days on the part of the defendants in entering appearance in the suit that came to be dismissed on 19.11.2014. Thereafter, again, the petitioner and the 2nd respondent, who were the defendants in Summary Suit in O.S.No.8 of 2014, have filed I.A.No.60 of 2014 seeking to recall the order dated 21.03.2014 before the Additional District Court, Ponneri and the same came to be dismissed on 19.11.2014. Meanwhile, the summary suit came to be finally decided and decreed in favour of the plaintiff, the 1st respondent herein, by order dated 21.11.2014. As against which, I.A.No.211 of 2015 in Summary Suit No.8 of 2014 came to be filed by the petitioner and the 2nd respondent under Section 5 of Limitation Act to condone the delay of 310 days in filing the application to set aside the exparte decree dated 21.11.2014.

4. In the meanwhile, the decree holder, plaintiff, 2nd respondent herein filed Execution Petition No. 77 of 2015 in O.S.No.8 of 2014 and the E.P. Came to be finally decided by the IV Additional District Court, Ponneri resulting in the arrest of the petitioner herein.

5. It is seen from the records that as against the order passed in E.P.No.77 of 2015, Civil Revision Petition in C.R.P.No.520 of 2016 was filed by the defendants in O.S.No.8 of 2014, which came to be later on withdrawn for the reason that since the Judgment Debtor is in Gurgaon, he may have to proceed with the execution proceedings transmitted to Guragaon and he also made an endorsement for withdrawing the execution petition in E.P.No.77 of 2015 on the file of IV Additional District Court, Ponneri. On recording the same, the Civil Revision Petition was permitted to be withdrawn. Meanwhile, I.A.No.211 of 2015 in O.S.No.8 of 2014 was taken out by the petitioner and the 2nd respondent to condone the delay of 310 days in setting aside the exparte decree dated 21.11.2014 and the same was taken up for consideration, by order dated 11.11.2019, the learned IV Additional District Judge, Thiruvallur at Ponneri dismissed the said petition, as against which, the present Revision Petition has been filed.

6. Heard the learned counsel for the petitioner and perused the documents placed on record. Though notice was served on the respondents, there is no representation on behalf of the respondents.

7. The learned counsel for the petitioner in support of his contention has relied on the Judgments, which are as follows:-



- (i) 2009 (4) CTC 722 [S.Janaki Vs. M/s Swetha Associates, rep. By its Partner, Mr.P.Sureshkumar and others]
- (ii) 2010 SCC Online Delhi 760 [Babu Lal Yadav Vs. M/s R.S.Yadav & Co., & Another]
- (iii) 2016 SCC Online Bombay 723 [Business Jet India Ltd., Vs. Hymayun Dhanrajgir and Another]
- (iv) 2006 (1) CTC 709 [Subatra and Others Vs. C.Pavalamani]
- (v) 2006 (1) CTC 721 [Deivendran Vs.Subbiah Nadar and Others]
- (vi) Unreported Judgment in C.R.P.(NPD) No.998 of 2010 [D.Rajini Sukumar Vs. Pushpa Kumari]
- (vii) 2013 2 LW 949 [M/s.Shivsu Canadian Clear International Limited Vs. Freightcan Global Logistics Private Limited]
- (viii) 2015-1-L.W. 889 [Pachamuthu Vs. K.Thangamuthu]
- (ix) (2017) 1 Supreme Court Cases 568 [IDBI Trusteeship Services Limited Vs. Hubtown Limited]

8. Upon going through the records placed before this Court and on hearing the arguments of the learned counsel for the petitioner, it is seen that a summary suit has been filed as early as 18.12.2013 in O.S.No.8 of 2014 by the 1st respondent herein, as against the petitioner, who was arrayed as 2nd defendant and his company is arrayed as 1st defendant under Order 37 Rule 1 and 2 of the Code of Civil Procedure. The suit filed under Order 37 caused a duty upon the defendants in Rule 2 and 3, wherein the defendants shall not defend the suit referred in Sub Rule 1 unless they enter appearance and in default of their entering appearance, the allegation in the plaint shall be deemed to be admitted and the plaintiff, viz., 1st respondent, shall be entitled to the decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate specified, if any, upto the date of decree and as such, sum for cost, as may be determined by the High Court from time to time by the Rules made in that behalf and such decree may be executed forthwith. Hence the procedure contemplated for the defendants to make appearance is further elucidated in Rule 3 that the defendants may at any time within ten days of service enter an appearance either in person, or by pleader and in either case, he shall file in court the address for service of notices on him.

9. The Civil Procedure Code had cast a duty upon the defendants to enter appearance and to seek leave to defend in any day within 10 days from the date of service of summons, as contemplated under Rule 3 of Order 37, failing which, the court can proceed, as deemed admission by the defendants and the plaintiff shall be entitled for the decree.



10. As far as the present case is concerned, there is no doubt that the service of summons in the summary suit was effected. But the defendants had failed to appear and filed the leave to defend application within the specified time and sought the intervention of the Court to condone the delay of 10 days in entering the appearance. The Petition in I.A.Nos.59 and 60 of 2014 came to be dismissed on 19.11.2014. Further, originally when I.A.No.59 of 2014 was filed seeking to condone the delay of 10 days in entering appearance in the suit, the same came to be dismissed on 19.11.2014 and on the very same day, when I.A.No.60 of 2014 filed to recall the order dated 21.03.2014, the said I.A., was also dismissed and the said order is neither challenged nor appealed and attained finality. No doubt thereafter, the learned IV Additional District Judge, Ponneri, in compliance to the Order 37 Rule 2, 3 has decreed the suit in favour of the plaintiff, the 1st respondent herein, by Judgment and decree dated 21.11.2014. Thereafter filing I.A.No.211 of 2015 seeking condonation of 310 days delay in filing the application to set aside the exparte decree dated 21.11.2014 under Section 5 of Limitation Act, does not arise, as the petitioner has not challenged the original dismissal of the petition filed to condone the delay in seeking leave and to recall the order dated 21.03.2014 and when the petitioner has not taken out any steps to set aside the order, the petitioner, who was defendant in the summary suit, cannot later on file, petition to set aside the exparte decree made in the summary suit. As such, when the leave was denied, the question of defending the suit does not arise unless otherwise the denial of leave is set aside by a Higher Forum.

13. Coming to the present case on hand, it is clear that the petitioner had sought leave and the same was denied as early as on 21.03.2014 itself and since the petitioner did not pursue the final order made in I.A.Nos.59 and 60 of 2014 in O.S.No.8 of 2014, the petition filed to condone the delay of 310 days in filing the application to set aside the exparte decree dated 21.11.2014 in I.A.No.211 of 2015 in O.S.No.8 of 2014, as such, not acceptable. Eventhough there are reasons stated in the petition for not acting in accordance with law, this Court cannot accept the same when the same are not tenable. That apart, the Judgments relied on by the learned counsel for the petitioner are mostly on the issue of condonation of delay, which does not arise in the present petition and has got no relevance for the present case.

14. In view of the above stated reasons and the facts and circumstances of the present case, this Court is of the view that the order passed by the learned IV Additional District Judge, Thiruvallur @ Ponneri needs no intervention, as the petitioner has not made out any valid grounds seeking



intervention from this Court. Accordingly, the present Civil Revision Petition deserves to be dismissed and the same is dismissed. Consequently, connected miscellaneous petition is closed.

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-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

To

1. The learned IV Additional District Judge,
Thiruvallur @ Ponneri.

Copy to

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

+1 CC to Mr.Thriyambak J. Kannan, Advocate sr 29490.

C.R.P.No.2300 of 2020 and
C.M.P.No.14432 of 2020

SSN(CO)
SP(26/07/2021)