

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.02.2021
CORAM:
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.R.P.No.2313 of 2020

P.Navamani

.. Petitioner

Vs.

The Branch Manager,
Federal Bank Limited,
Pollachi Branch,
Coimbatore District.

..Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 03.02.2020 passed in I.A.No.725 of 2019 in O.S.No.137 of 2017 on the file of the Sub Court, Udumalpet, Tiruppur District.

For Petitioner : Mr.C.Prakasam
For Respondent : No appearance

O R D E R

The Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order dated 03.02.2020 passed in I.A.No.725 of 2019 in O.S.No.137 of 2017 on the file of the Sub Court, Udumalpet, Tiruppur District.

2. The respondent herein is the plaintiff and the petitioner is the defendant in the suit in O.S.No.137 of 2017, which has been filed by the respondent herein/ Bank for directing the petitioner/ defendant to pay a sum of Rs.4,44,500/- along with subsequent interest thereon at the rate of 9.88% p.a with yearly rests from the date of suit till the realization of the amounts to the plaintiff, declaring the amount due to the plaintiff on the suit mortgage calculated up to a date to be fixed by this court on account of this suit amount, subsequent interest and costs of the suit directing the defendant to pay into court on or before such date the amount to be so declared as due to the plaintiff and in default of such payment directing the sale of mortgaged properties described in the schedule hereto, directing the plaintiff the liberty to apply for an order for the balance in case the proceeds of sale are found to be insufficient to pay the amount due to the plaintiff and for costs.

3. The counsel who appeared for the defendant in the suit has reported no instructions from the defendant and hence the defendant in the suit was set-exparte and the exparte decree came to be passed in the suit in O.S.No.137 of 2017 on 18.07.2018. The petitioner herein/ defendant who was set exparte filed an application in I.A.No.725 of 2019 seeking to condone the delay of 220 days in filing the set aside petition on the ground that he was on bed rest and had suffered from Sugar and Blood Pressure, due to which he could not contact his counsel and give instructions to proceed the suit. The learned counsel for the respondent Bank has made an endorsement that the petition may be allowed on costs. However, the court below has dismissed the said application on the ground that there is no valid reason given by the petitioner to condone the delay of 220 days in filing the petition to set aside the exparte decree. The court below has relied upon the judgment of this court in Arukkani Ammal Vs. Guruswami reported in 1987 (1) MLJ 32, wherein, it has been observed as follows:

The power of the court to set aside an exparte decree is to be exercised judicially and unless sufficient cause is shown for non-appearance on the day on which the suit is fixed for hearing there will be no jurisdiction or justification for the trial court to set aside the exparte decree. The willingness of the counsel for the plaintiff to accept costs does not confer jurisdiction on the court to set aside the exparte decree and when the court agrees to set aside the exparte decree on such concession, this virtually amounts to abdication of the jurisdiction and the discretion of the court in favour of the counsel for the plaintiff. This practice is to be deprecated.

4. By relying on the above decision that the discretion of the court in favour of the counsel for the plaintiff has to be deprecated, the court below has dismissed the condone delay petition.

5. The learned counsel for the petitioner would submit that the suit was posted for trial on 18.07.2018 and the petitioner was suffering from sugar and blood pressure due to which he was not in a position to contact his counsel who appeared before the court below, hence on the said date the counsel had made an endorsement as no instructions from the petitioner. Based on the said submission of the counsel the suit was decided exparte. Thereafter, the petitioner had filed an application to condone the delay in filing the petition to

set aside exparte decree. The reasons assigned for the said delay was not considered by the court below and the counsel who appeared for the respondent had also made an endorsement that the application can be allowed on costs. In spite of the said endorsement, the court below had dismissed the application filed by the petitioner to condone the delay in filing the petition to set aside the exparte decree. He would further submit that the petitioner has obtained an agricultural loan for a sum of Rs.2,75,000/-, for which now the exparte decree has been passed for a sum of Rs.4,44,500/- along with interest at 9.88% per annum. Hence, he prays for an opportunity to appear before the lower court and agitate the matter, by allowing this Civil Revision Petition and setting aside the order of dismissal made by the court below in condone delay petition.

6. From the above submissions it could be seen that the petitioner was set exparte and the exparte decree was passed for his non appearance and his counsel reported no instructions. Further, the petitioner has filed a petition to set aside the exparte decree but the same was with a delay of 220 days, hence, he filed a petition to condone the delay in filing the petition. The reasons assigned for the delay was that he was suffering from sugar and blood pressure and no documentary evidence were produced to support the said claim. However, the counsel for the respondent in the said petition has made an endorsement that the petition may be allowed on costs. Thus, it is evident that the respondent bank has no objection for the petition to be allowed.

7. From the above discussions, this court is of the view that the suit is one filed by the Bank for directing the petitioner to pay the amounts which was borrowed by him as a Agricultural loan, and the exparte decree came to be passed by the court below. Now the petitioner has come up with this petition to condone the delay in filing the petition to set aside the exparte decree and the respondent bank had no objection for the petition being allowed on costs before the court below. Hence, this court is of the view that the petition to condone the delay of 220 days in filing the petition to set aside the exparte decree may be allowed on costs to give an opportunity to the petitioner.

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8. Accordingly, this Civil Revision Petition is allowed and the fair and decreetal order dated 03.02.2020 passed in I.A.No.725 of 2019 in O.S.No.137 of 2017 on the file of the Sub Court, Udumalpet, Tiruppur District is set aside on condition that the petitioner shall pay a costs of Rs.2,000/- (Rupees Two Thousand only) to the respondent within a period of four (4) weeks from the date of receipt of a copy of the order. No costs.

-s/d-
Assistant Registrar

True Copy

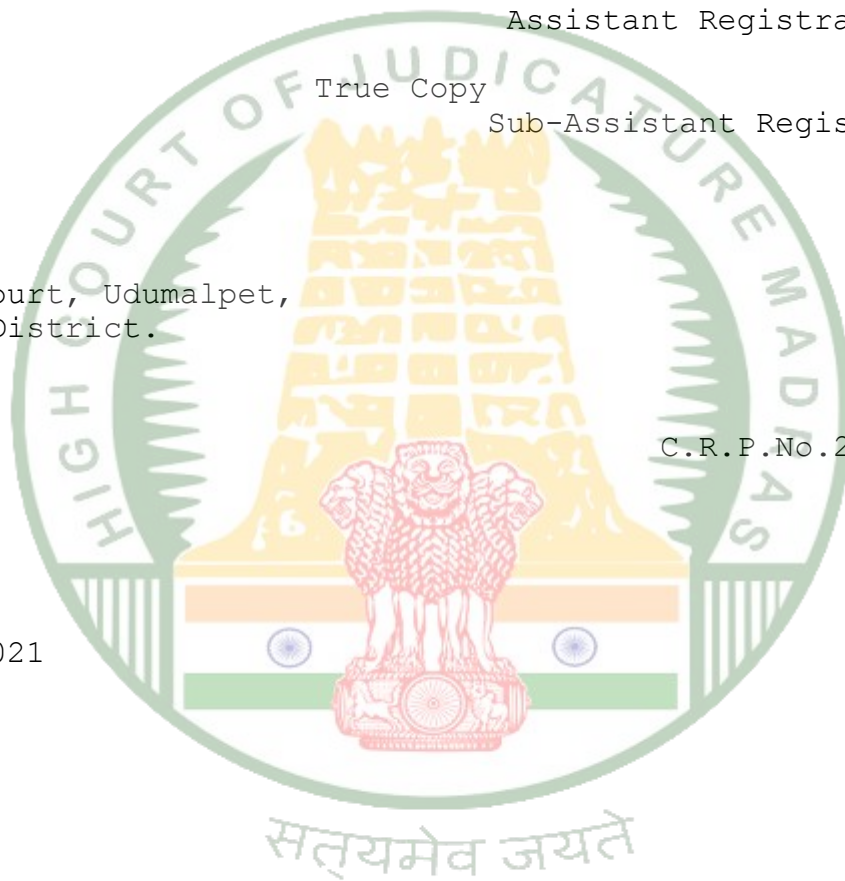
Sub-Assistant Registrar

dsa
To

The Sub Court, Udumalpet,
Tiruppur District.

C.R.P.No.2313 of 2020

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