

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD).No.1281 of 2017

Neela (died)
Ravichandran

... Petitioner

Vs.

Kilpauk Benefit Society Ltd.,
81, New Avadi Road,
Kilpauk, Chennai-600 010.

... Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 06.02.2017 made in C.M.P.No.53 of 2013 in A.S.No.87 of 2007 on the file of the learned XVI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.G.Appavu

For Respondent : Ms.V.S.Sowmya

ORDER

This Civil Revision Petition is directed as against the order dated 06.02.2017 passed by the learned XVI Additional Judge, City Civil Court, Chennai, in C.M.P.No.53 of 2013 in A.S.No.87 of 2007, thereby

dismissing the petition to condone the delay of 86 days in filing the petition to set aside exparte decree.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit in O.S.No.4669 of 2004 for redemption of mortgage and the suit was allowed by the judgment and decree dated 22.03.2006. Aggrieved by the same, the respondent filed appeal suit. Initially the appeal suit was pending on the file of the VI Additional City Civil Court, Chennai. Both the counsels appearing on behalf of the appellant and the respondent were argued at length and the matter was reserved for judgment.

3. At that juncture, the appeal suit itself transferred from the VI Additional City Civil Court, Chennai to XVI Additional City Civil Court, Chennai. Unfortunately, the counsel appearing for the petitioner could not appear before the appellate Court and after adjourning the matter on three occasions, the appellate Court allowed the appeal. Therefore, the petitioner filed petition to set aside the exparte order dated 10.04.2013 passed in

A.S.No.87 of 2007 with the delay of 86 days. The Court below dismissed the said petition as against which the present Civil Revision Petition.

4. On perusal of the counter filed by the respondent revealed that when the appeal suit was pending on the file of the VI Additional City Civil Court, Chennai, both the counsels had extensively argued the matter and the appeal suit was posted for judgment. At that juncture, on the direction issued by this Court, the appeal suit was transferred to the XVI Additional City Civil Court, Chennai and the appeal suit was posted for hearing on 11.02.2013. Since the counsel appearing for the petitioner was absent, the matter was adjourned to 11.03.2013. Thereafter, it was adjourned to 15.03.2013, 20.03.2013 and 21.03.2013. Finally the matter was adjourned to 28.03.2013. Even then, the learned counsel appearing for the petitioner did not appear before the appellate Court as such, the appellate Court allowed the appeal on merits and in accordance with law, by the judgment and decree dated 10.04.2013. Therefore, without hearing the learned counsel appearing for the petitioner, the appellate Court allowed the appeal.

5. That apart, on perusal of the affidavit filed in support of the petition to condone delay of 86 days in filing the petition to set aside the exparte order, due to ill health of the petitioner counsel's wife, he could not appear before the appellate Court. Further revealed that the counsel's wife admitted to the Bilroth Hospital, Chennai for her kidney treatment. Therefore, he could not be able to appear before the appellate Court.

6. Considering the above facts and circumstances, though the appellate Court allowed the appeal suit on merits, the petitioner may be given one more opportunity to argue the appeal suit. Accordingly, the order dated 06.02.2017 passed by the learned XVI Additional Judge, City Civil Court, Chennai, in C.M.P.No.53 of 2013 in A.S.No.87 of 2007, is hereby set aside on condition that, the petitioner shall pay a sum of Rs.2,500/- (Rupees two thousand five hundred only) as cost to the respondent, within the period of two weeks from the date of receipt of copy of this Order, failing which the order passed by this Court will stand automatically cancelled. Thereafter, the appellate Court is directed to hear the arguments of both the counsels and pass orders on merits and in accordance with law.

7. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs.

24.03.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The XVI Additional Judge,
City Civil Court, Chennai.

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



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G.K.ILANTHIRAIYAN, J.

rts



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