

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU

**C.R.P. (PD) No. 2079 of 2017
and
C.M.P. No. 9971 of 2017**

R.Devaraj

... Petitioner

-VS-

The Branch Manager,
Canara Bank,
Kolappalur.

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the condition imposed vide order and decreetal order dated 04.02.2017 in I.A. No. 722 of 2016 in O.S. No. 16 of 2011 on the file of the Subordinate Judge, Gobichettipalayam, Erode District.

For Petitioner : Mr. K.Sudhakar

For Respondent : Mr. Navaneethakrishnan
for Mr. M.L.Ganesh

ORDER
(through video conference)

The Civil Revision Petition challenges the order dated 04.02.2017 in I.A. No. 722 of 2016 in O.S. No. 16 of 2011 on the file of the Subordinate Court, Gobichettipalayam (hereinafter referred to as the 'Trial Court' for short). The

parties are hereinafter referred to as per their description in the suit in O.S. No. 16 of 2011 before the Trial Court for the sake of clarity and convenience.

2. The Plaintiff had instituted the suit in O.S. No. 16 of 2011 for recovery of the aggregate sum of Rs. 1,84,288/- with interest and costs and for a preliminary decree against the Defendant for a sum of Rs. 60,743/- towards sale of mortgaged property. Though the Defendant entered appearance and filed Written Statement, he subsequently did not attend the trial of the case and was set exparte resulting in the exparte decree dated 07.03.2017 passed by the Trial Court. The Defendant thereafter filed an application in I.A. No. 722 of 2016 under Rule 13 of Order IX of the Code of Civil Procedure, 1908, to set aside the exparte decree. Though the said application was ordered, the Trial Court had imposed a condition that if half of the decree amount has not been paid to the credit of O.S. No. 16 of 2011 in a nationalized bank by 06.03.2017, the petition shall stand dismissed. Aggrieved thereby, the Defendant has filed this Civil Revision Petition.

3. Heard Mr. K.Sudhakar, Learned Counsel for the Defendant and Mr. Navaneethakrishnan, Learned Counsel for the Plaintiff and perused the materials placed on record, apart from the pleadings of the parties.

4. Learned Counsel for the Defendant vehemently contends that the imposition of condition to deposit of half of the decree amount virtually deprives the Defendant of the right to contest the suit. Learned Counsel for the Plaintiff, while supporting the impugned order, contends that unless such condition is imposed, it would cause prejudice to the Plaintiff, which is a nationalized bank.

5. Having regard to the rival submissions, it is relevant to notice here that the Hon'ble Supreme Court of India in ***Vijay Kumar Madan -vs- R.N.Gupta Technical Education Society*** [(2002) 5 SCC 30] has held that conditions imposed for setting aside the exparte decree ought not to be onerous. In view of the aforesaid dictum laid down by the Hon'ble Supreme Court of India, it has to be held that the onerous condition to deposit half of the decree amount deprives the Defendant of the right to effectively contest the suit and that it would be appropriate to restrict the condition to Rs. 25,000/-. Learned Counsel for the Defendant states that the said amount has been paid today by way of Demand Draft No. 453120 dated 08.03.2021 drawn on Tamilnad Mercantile Bank Ltd., Othakuthirai Branch in favour of the Plaintiff, which has been received by the Learned Counsel for the Plaintiff without prejudice to the rights and contentions of the Plaintiff. The said amount shall be immediately credited to the loan

account of the Defendant and depending upon the ultimate outcome in the suit, the balance amount found due would have to be worked out. In that view of the matter, the impugned order shall be treated as modified. The parties through their respective Learned Counsel shall appear before the Trial Court on 19.04.2021 for recording evidence in the suit. It shall be ensured by the Trial Court that there is atleast one effective hearing every week showing progress of the case. The Trial Court shall expeditiously dispose of the case on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

The Civil Revision Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

vjt

25.03.2021

Index: Yes/No

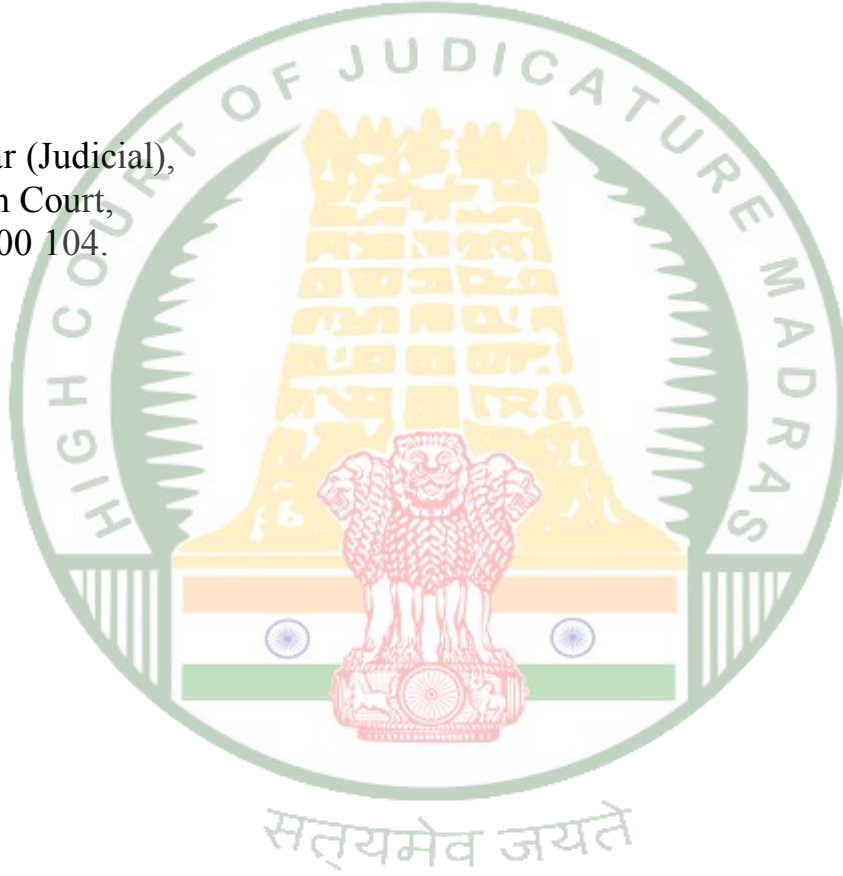
Note: Issue order copy by 08.04.2021.

To

1. The Branch Manager,
Canara Bank,
Kolappalur.
2. The Subordinate Court,
Gobichettipalayam,
Erode District.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



WEB COPY

C.R.P. (PD) No. 2079 of 2017

P.D. AUDIKESAVALU, J.

vjt



C.R.P. (PD) No. 2079 of 2017

WEB COPY

25.03.2021