

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2457 of 2017
and C.M.P.No.11657 of 2017

Jayanthi Ramesh

.. Petitioner

Vs.

1.E.Mahendran

2.R.Manikandan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 21.06.2016 made in I.A.No.249 of 2017 in O.S.No.2279 of 2016 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner

: Mr.R.Chakkaravarthy
for M/s.V.Baskaran

For Respondents

: Ms.Raja Shama Gayathri
for Mr.K.Kovi Ganesan

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 21.06.2016 made in I.A.No.249 of 2017 in O.S.No.2279 of 2016 on the file of the XVI Assistant City Civil Court, Chennai.

2.The petitioner is defendant in O.S.No.2279 of 2016 on the file of the XVI Assistant City Civil Court, Chennai. The respondents filed the said suit for recovery of money against the petitioner. The petitioner entered appearance through counsel on 14.06.2014, but she did not file written statement. She was set exparte on 03.12.2016. The petitioner filed I.A.No.249 of 2017 under Order IX Rule 9 of C.P.C., to set aside the exparte order dated 03.12.2016. According to the petitioner, on that date, her counsel was not well and bedridden and hence, she could not file written statement. Non-filing of written statement is neither wilful nor wanton. The respondents filed counter affidavit, giving the dates on which the petitioner was granted time to file written statement. As per

Order VIII Rule 1 of C.P.C., the written statement has to be filed within 30 days from the date of receipt of summons. The petitioner filed written statement only after 190 days, after being set exparte on 03.12.2016. He has not filed any delay petition along with the petition to set aside the exparte order. The petitioner has intentionally not filed written statement within the time limit, with a view to prolong the proceedings. The reason given by the petitioner is not valid and prayed for dismissal of I.A.No.249 of 2017.

3.The learned Judge, considering the averments in the affidavit, counter affidavit and dates given by the respondents and judgments relied on by the learned counsel for the respondents, dismissed the I.A.No.249 of 2017, holding that the reason given by the petitioner to set aside the exparte order is not sufficient and valid.

4.Against the said order dated 21.06.2016 made in I.A.No.249 of 2017 in O.S.No.2279 of 2016, the present Civil Revision Petition has been filed.

5.The learned counsel appearing for the petitioner contended that only after condoning the delay in filing the written statement, the suit was posted to 03.12.2016, for filing written statement. Having condoned the delay in filing the written statement, the learned Judge erred in dismissing the I.A. filed under Order IX Rule 9 of C.P.C. The written statement was prepared in November, 2016 and due to ill-health of the counsel, it was not filed on 03.12.2016. The learned Judge failed to consider that along with the petition to set aside exparte order, the written statement was filed by the petitioner. The learned Judge ought to have taken the written statement on file and set aside the exparte order. The learned Judge committed an error in discussing the limitation in the petition filed to set aside the exparte order. The two judgments relied on by the counsel for the respondents before the Trial Court are not applicable to the facts of the present case and prayed for allowing the Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the entire materials available on record.

7.From the materials on record, it is seen that the petitioner was set exparte on 03.12.2016, for not filing written statement. The petitioner filed I.A.No.249 of 2017 to set aside the exparte order along with the written statement. In the affidavit filed to set aside the exparte order, the petitioner has given reason that her Advocate was bedridden on 03.12.2016 and therefore, he could not appear before the Court and file written statement on that day. The petitioner or her counsel failed to produce any materials to show that her counsel was bedridden and could not attend the Court. Similarly, no document was filed showing the date from which her counsel was not well. Further, the respondents have given date on which the petitioner entered appearance and subsequent dates granted for filing written statement. By furnishing the dates, the respondents have established that the petitioner has not filed written statement within 90 days, as contemplated under Order VIII Rule 1 of C.P.C. The written statement was filed only after 190 days of service of summons and petitioner has not filed any application for condoning the delay. The contention of the learned counsel for the petitioner that only

after condoning the delay, the suit was posted for filing written statement and the consideration of limitation by the learned Judge is erroneous, is without merits. As per Order VIII Rule 1 of C.P.C., the defendant has to file written statement within 30 days from the date of issue of summons. The Court can extend the time for filing written statement by another 60 days, by recording the reason for granting time. This provision clearly shows that the Court can extend the time only by recording reason for such an extension. In the present case, the learned Judge has not granted any extension of time by recording reason as contemplated under Order VIII Rule 1 of C.P.C. In view of the same, the learned Judge rightly considered the limitation for filing the written statement. That apart, the only reason given by the petitioner for not appearing and not filing the written statement on 03.12.2016 is, her counsel was bedridden. As rightly considered by the learned Judge, the petitioner has not proved by filing documents that her counsel was bedridden and has not attended the work on that date. Further, the petitioner was not diligent enough to follow the case with her Advocate. The petitioner has not explained as to why the written statement was not filed within 90 days, as contemplated under

Order VIII Rule 1 of C.P.C. An exparte order or decree can be set aside only when a party gives sufficient or valid reason for condoning the same. In the present case, the reason given by the petitioner is not sufficient and valid. The learned Judge has considered the entire materials and rightly dismissed I.A.No.249 of 2017. There is no error or irregularity in the order of the learned Judge, warranting interference by this Court.

For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.09.2021

Index :: Yes/No
gsa

To

The XVI Assistant Judge,
City Civil Court, Chennai.

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V.M.VELUMANI, J.

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