

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(PD).No.4744 of 2017

and

C.M.P.No.22320 of 2017

S.E.Sivakami
W/o.Eswaran

... Petitioner

Vs.

P.Moorthy
S/o.Perumal

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 25.10.2017 in I.A.No.636 of 2017 in O.S.No.75 of 2014 passed by the learned Sub-Judge, Sathyamangalam, Erode District, dismissing the petition filed under Section 5 of the Limitation Act.

For Petitioner : Mr.K.A.Mariappan
For Respondent : Mr.M.Roshan Atiq

ORDER

(The case has been heard through video conference)

Civil Revision Petition has been filed seeking to set aside the order dated 25.10.2017 in I.A.No.636 of 2017 in O.S.No.75 of 2014 passed by the learned Sub-Judge, Sathyamangalam, Erode District, dismissing the petition filed under Section 5 of the Limitation Act.

2.Learned counsel for the petitioner would submit that the petitioner is a lady and she is the defendant in O.S.No.75 of 2014. The money suit has been filed for recovery of Rs.3,64,400/- with interest at the rate of 12% per annum. After service of summons, the petitioner had filed written statement and was pursuing the case, the case was posted for cross examination of P.W.1 on 05.04.2016. The petitioner was affected with jaundice from March 2016. Since she was advised complete bed rest, she was unable to move out of the house and hence unable to contact her counsel and give instructions. Meanwhile, since there was no instructions from the petitioner, she was set exparte and later exparte decree was passed on 26.04.2016 since the petitioner did not cross examine P.W.1. Immediately after the decree, the respondent / plaintiff had also initiated execution proceedings and only after

the notice from the Execution Court, the petitioner came to know about the exparte decree. Meanwhile, the petitioner was also set exparte in the Execution proceedings. Immediately, the petitioner had approached her counsel and after knowing about the exparte orders, had filed a petition to set aside the exparte decree. Meanwhile, there had been a delay of 197 days in filing the said application and thereby the petition to set aside the exparte decree was filed along with the petition to condone the delay of 197 days. Though the petitioner had shown sufficient cause for not appearing before the Court, the trial Court had dismissed the petition, against which, the present Revision has been filed.

3.Learned counsel would submit that the reason for her not appearing before the Court is neither wilful nor wanton but due to her illness. The petitioner had filed a written statement and had been vigilantly following the case, however, only due to sickness she had not appeared and further the delay is also not huge. Since the petitioner was down with jaundice and taking native treatment she was also unable to produce sufficient supporting documents. He would further submit that the suit is for recovery of money

which the petitioner does not owe to the respondent / plaintiff and if the exparte decree is not set aside and if the petitioner is not permitted to contest the suit, the petitioner would be put to untold suffering and hardship and hence he would pray that the petition may be allowed on imposing cost and stringent conditions.

4.Learned counsel appearing for the respondent / plaintiff would submit that the petitioner had been set exparte and an exparte decree has been passed on 26.04.2016. The petitioner did not file the petition to set aside the exparte decree within time. The petition has been filed only after the respondent initiated execution proceedings. He would further submit that the petitioner had filed a petition to set aside the exparte decree on 09.12.2016 and she did not take any steps to number the petition immediately and the petition was numbered only on 19.08.2017, thereby, the petitioner had intentionally delayed the further proceedings.

5.Heard the counsels. Perused the materials on record.

6.The petitioner was set exparte and the exparte decree had been passed on 26.04.2016. It is the submission of the petitioner that she was down with jaundice and thereby she was unable to cross examine the respondent / plaintiff and thereby the exparte decree came to be passed. It is a case of money suit and that the petitioner has suffered decree for a sum of Rs.3,64,400/- with interest and this Court is of the opinion that if the petitioner is not given an opportunity to cross examine the respondent / plaintiff, she would be put to irreparable loss and hardship. Hence, this Court is of the opinion that the Revision may be allowed on imposing exemplary cost fixing of terms.

7.In view of the above, the Revision stands allowed and the order dated 25.10.2017 in I.A.No.636 of 2017 in O.S.No.75 of 2014 passed by the learned Sub-Judge, Sathyamangalam, Erode District is hereby set aside. I.A.No.636 of 2017 is allowed on condition that the petitioner shall pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondent / plaintiff within a period of four (4) weeks from the date of receipt of a copy of this order, failing which, the order dated 25.10.2017 would stand automatically restored to file without any further reference.

A.D.JAGADISH CHANDIRA, J.

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8.The trial Court shall take steps to dispose of the suit filed in O.S.No.75 of 2014 within a period of four months from the date of next hearing. The petitioner shall file an affidavit of undertaking before the trial Court stating that she will cross examine P.W.1 and cooperate with the trial Court for speedy disposal of the case and she will cross examine the witnesses on the side of the plaintiff on the same day or on the next hearing date fixed by the trial Court. Consequently, the connected miscellaneous petition is closed. No costs.

30.04.2021

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Index : yes / no Internet : yes / no
Speaking /Non speaking order

To.

The Sub Court
Sathyamangalam
Erode District

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and

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