



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.146 of 2021

and CMP(MD)No.885 of 2021

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Selvaraj

... Petitioner

vs.

Dhanalakshmi

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.10.2020 in I.A.No.1 of 2020 in O.S.No.236 of 2010 on the file of the Additional Subordinate Judge, Tirunelveli.

For Petitioner

: Mr.G.Prabhu Rajadurai

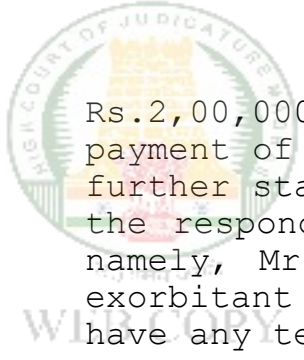
ORDER

This revision petition has been filed against the fair and decreetal order dated 13.10.2020 in I.A.No.1 of 2020 in O.S.No.236 of 2010 on the file of the Additional Subordinate Judge, Tirunelveli.

2.The learned counsel for the petitioner would state that the respondent herein as plaintiff filed O.S.No.236 of 2010 which was previously numbered as O.S.No.49 of 2007 before the Additional Sub Court, Tirunelveli, for the relief of direction directing the petitioner/defendant to pay a sum of Rs.5,60,000/- with subsequent interest at the rate of 12% per annum and in default, directing the schedule property to be sold through the court and to pay the amount due to the respondent/plaintiff.

3.According to the petitioner/defendant in the present revision petition, he borrowed a sum of Rs.2,00,000/- from the respondent/plaintiff on 31.01.2000 and executed a registered mortgage deed in respect of the suit schedule property in favour of the respondent/plaintiff and agreed to repay the mortgage debt within two years. It is also contended that the petitioner/defendant has to pay the interest at the rate of 24% per annum for two years, and in default, agreed to pay the compound interest along with principal and accrued interest. But, since the petitioner/defendant had not paid the interest or the principal amount, a notice was sent by the respondent/plaintiff to the petitioner/defendant and the above suit was filed for recovery of the loan amount with interest.

4.The learned counsel for the petitioner would further state that the petitioner/defendant filed a written statement admitting the execution of the registered mortgage deed and the reception of

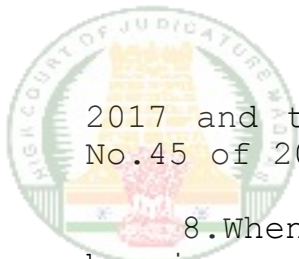


Rs.2,00,000/- as true, but denied the statement regarding the non-payment of interest amount stating that it was properly paid. It is further stated that he was paying the interest amount every month to the respondent/plaintiff through one Village Administrative Officer namely, Mr.Rajendran and he also claimed that interest was highly exorbitant and he would also state that the learned Judge did not have any territorial jurisdiction as to the suit schedule property.

5.According to the petitioner/defendant, since he was not able to appear before the Court, he was set exparte and exparte decree was passed on 07.10.2014. Challenging the exparte decree, he preferred an application to set aside the exparte decree and the same was dismissed for non payment of cost and hence the petitioner preferred revisions before this Court. In the meanwhile, the respondent filed an application in I.A.No.279 of 2015 before the Additional Sub Judge, Tirunelveli, for passing of final decree. Since the petitioner/defendant could not appear, the learned Judge by order dated 21.04.2017 passed the final decree and challenging the same, the petitioner preferred appeal in A.S.No.119 of 2017 before the 1st Additional District Judge, Tirunelveli, and the same was dismissed holding that the order passed by the learned Judge did not warrant any interference, against which, the petitioner/defendant preferred second appeal in S.A(MD)No.45 of 2020. Since the learned Judge has dismissed the present application erroneously by order dated 13.10.2020, stating that the petitioner has not raised the plea of jurisdictional issue, the learned counsel for the petitioner would state that the petitioner has filed the present revision petition against that order.

6.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to respondent is not necessary.

7.At the outset, this revision petition has to be dismissed with heavy cost. The suit was decreed exparte on 07.01.2014 and petitioner/defendant has filed application in I.A.No.843 of 2015 to condone the delay of 236 days in filing the application to set aside the exparte decree and by order dated 01.08.2016, the trial Court allowed the application in I.A.No.843 of 2015 subject to a condition that the defendant pays a cost of Rs.1,250/- to the Legal Aid Centre on or before 10.08.2016. The said amount was not paid and hence, application in I.A.No.843 of 2015 came to be dismissed for non compliance of the conditional order dated 01.08.2016. Immediately thereafter, the petitioner/defendant filed two applications in I.A.Nos.582 and 583 of 2016 seeking extension of time for payment of cost and to set aside the order dismissing I.A.No.843 of 2015 for not complying with the conditional order. Those two applications were dismissed by the trial Court on 22.11.2016. Aggrieved over the same, the petitioner has filed revision petitions in CRP(MD)Nos.604 and 605 of 2017. In the interregnum period, I.A.No.279 of 2015 filed by the respondent/plaintiff for passing of final decree was



2017 and that was also dismissed, against which, he filed S.A(MD) No.45 of 2020.

8. When CRP(MD)Nos.604 and 605 of 2017 had come up for final hearing, recording the entire happenings, this Court found that the trial Court finding that there was negligence on the part of the petitioner/defendant in prosecuting the suit and the negligence disentitled the petitioner/defendant from seeking indulgence of the Court for extension of time under Section 148 CPC, dismissed I.A.Nos.582 and 583 of 2016. Therefore, finding that it is a fit case where the petitioner has to be given an opportunity as the petitioner wants to defend the suit with regard to the quantum of interest alone, and by relying on the judgment reported in **University of Delhi vs. Union of India** reported in **2019 SCC Online SC 1634**, wherein, it has been held that the Court should have pragmatic approach in the matters of condonation of delay, this Court by order dated 09.01.2020 in CRP(MD)Nos.604 and 605 of 2017, thought it fit that the petitioner should be given a chance to conduct the suit and accordingly allowed both the applications in I.A.Nos.582 and 583 of 2016. During the course of hearing of the above CRP(MD)Nos.604 and 605 of 2017, the petitioner paid the cost of Rs.1,250/- as ordered in I.A.No.843 of 2016 to the learned counsel for the respondent and such payment was also recorded. This Court by taking into consideration the long pendency of the above suit also, set aside the exparte decree passed in the suit in O.S.No.49 of 2007 dated 07.10.2014 and restored the suit in O.S.No.49 of 2007 on file which was later on numbered as O.S.No.236 of 2010.

9. In the order passed in CRP(MD)Nos.604 and 605 of 2017, the suit number has been wrongly mentioned as O.S.No.19 of 2007 instead of O.S.No.49 of 2007 which has been renumbered as O.S.No.236 of 2010 and since the suit has been unnecessarily delayed, due to the pendency of the above CRPs and taking into account the admission of the defendant as to the borrowing of Rs.2,00,000/-, this Court in the above CRPs, also directed the petitioner to pay the principal sum of Rs.2,00,000/- and accordingly the learned counsel for the petitioner has handed over a Demand Draft for a sum of Rs.2,00,000/- to the learned counsel for the respondent and such payment was also recorded. It was also made clear that the payment will be subject to the result of the suit and it shall be adjusted first towards the interest that is found to be payable by the petitioner as it is done in matters relating to payment under a money decree and accordingly, such an order came to be passed on 09.01.2020 in CRP.Nos.604 and 605 of 2017.

10. In view of the order passed in CRP.Nos.604 and 605 of 2017, dated 09.01.2020, the second appeal in S.A(MD)No.45 of 2020 was also allowed by judgment and decree dated 09.01.2020 and the suit in O.S.No.236 of 2010 was restored to file. The trial Court was



directed to dispose of the suit on or before 30.04.2020 and report compliance to this Court. Thereafter, the matter has come up by way of extension of time on 21.07.2020 and this Court by order dated 21.07.2020 has granted three more months to dispose of O.S.No.236 of 2010.

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11. Now, concealing all the facts which had been taken place before this Court and the order passed by the learned Judge in CRP (MD)Nos.604 and 605 of 2017, in the index to the typedset of papers filed in this revision, the CRP number has been shown as CRP(MD) No.604 of 2011 and the matter was called for by this Court. It was found that CRP(MD)No.604 of 2011 has nothing to do with the present case and while probing it, it was found that it was CRP(MD)Nos.604 and 605 of 2017. This Court called for the case bundles in CRP(MD) Nos.604 and 605 of 2017 and S.A(MD)No.45 of 2020 and had found the entire happenings before the court by dates and events and it is unfortunate that in spite of the orders passed by this Court to dispose of the suit within a time frame, now the present revision petition has been filed totally suppressing the entire happenings and the petitioner has come forward as if the Court has got no jurisdiction in dealing with the above matter. If the petitioner found that the Court did not have jurisdiction, he could have raised the same before this Court which dealt with CRP(MD)Nos.604 and 605 of 2017 and S.A(MD)No.45 of 2020. It is very unfortunate case where the respondent/plaintiff is made to wait from 2007 onwards and not able to get her remedy.

12.(*)In view of the above discussion, this Civil Revision Petition is dismissed with the cost of Rs.10,000/-, which amount shall be recovered from the petitioner along with the amount which he will be due when the suit is disposed of. The learned Additional Sub Judge, Tirunelveli, is directed to dispose of the suit in O.S.No.236 of 2010 on day-to-day basis within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

(*)Corrected as per the order of this Court dated 21.06.2021 made in CRP(MD).146 of 2021

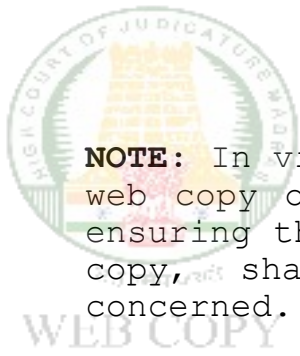
Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

(*) to be substituted the order already despatched on 10.06.2021

1. The Additional Subordinate Judge,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

Copy to:

1. The Section Officer,
Judicial Section,
Madurai Bench of Maduras High Court,
Madurai.

+1 CC to M/s.G.PRABHU RAJADUAI, Advocate **SR-19832**

ORDER MADE IN
CRP(MD)No.146 of 2021
DATED : 05.02.2021

AS (26.05.2021) 5P 5C

a1(CO)

TR(29.06.2021) 5P 6C