



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.906 of 2020

and

CMP(MD).No.5934 of 2020

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Ramathal ...Petitioner/Petitioner/1st Defendant

vs.

Sivakumar ...Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, 1973, to call for the records relating to the fair and decreetal order dated 08.07.2020 in I.A.No.684 of 2018 in O.S.No.178 of 2012 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mrs.K.R.Shivashankari
For Respondent : Mr.Veera Kathiraven, Senior Counsel
For M/s. Veera Associates

ORDER

This Civil Revision Petition has been filed to call for the records relating to the fair and decreetal order dated 08.07.2020 in I.A.No.684 of 2018 in O.S.No.178 of 2012 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri and set aside the same by allowing this Civil Revision Petition.

2.The learned counsel for the petitioner would submit that the respondent has filed a suit in O.S.No.178 of 2012 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri for declaration and for permanent injunction against the petitioner herein/first defendant. When the suit was posted for filing of written statement, the petitioner was suffering from severe stomach pain and jaundice, therefore, she was unable to contact her counsel and hence, she was set exparte and exparte decree was passed on 19.12.2017. The petitioner came to know about the exparte decree only when she received notice through Court in execution petition filed by the respondent/plaintiff upon the exparte decree. Immediately, she has filed an interlocutory application in I.A.No.684 of 2018 to condone the delay of 250 days in filing the application to set aside the exparte decree. After hearing the oral and documentary evidence, the learned District Munsif has dismissed the said I.A, against which, the present Civil Revision Petition.

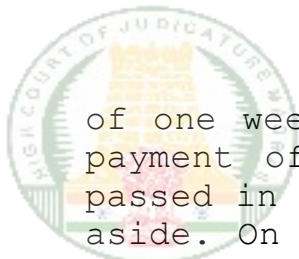


3.Per contra, the learned counsel for the respondent would submit that the revision petitioner has entered appearance in the suit through her counsel on 08.07.2013. In the said suit, the commissioner has submitted his report on 23.09.2015. As the revision petitioner has not filed counter for more than 23 months and on examining P.W.1 and marking Exhibits A1 to A4, the learned District Munsif has rightly passed an exparte decree against the petitioner on 19.12.2017. Subsequently, the respondent/plaintiff filed the Execution Petition on 25.06.2018 and even in the said E.P., there was no representation on behalf of the revision petitioner. Thereafter, on 01.11.2018, the petitioner has appeared through her counsel with an Interlocutory Application to condone the delay of 239 days in filing the I.A to set aside the exparte order passed on 19.12.2017. After hearing the case, the learned District Munsif has rightly dismissed the said I.A. stating that the petitioner has not properly explained each and every day delay to the satisfaction of the Court. Hence, the learned counsel prays to dismiss this revision petition.

4.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on records.

5. Perusal of record shows that the suit in O.S.No.178 of 2012 has been filed by the respondent/plaintiff claiming the relief of declaration and permanent injunction against the petitioner/1st defendant. When the suit was posted for filing of written statement on 22.12.2014, the petitioner failed to file her written statement stating that she was suffering from severe stomach pain and jaundice, therefore, she was unable to contact her counsel and she was set exparte on the same day. Subsequently, exparte decree was passed on 19.12.2017. Against which, she filed I.A.No.684 of 2018 to condone the delay of 250 days in filing the application to set aside the exparte decree. After hearing the case, the learned District Munsif finding that the only reason stated by the petitioner that she was unable to contact her counsel as she was suffering from jaundice and was taking home treatment and she came to know about the exparte decree after receiving notice from the Executing Court. The petitioner has not even mentioned about the execution proceedings number nor the date on which she received the notice. The Court below has also found that the reason stated by the petitioner that she was suffering from jaundice is bald and vague and nor supported by any documentary or oral evidence.

6.However, to render substantial justice to the parties concerned, this Court feels that one opportunity can be given to the petitioner herein for filing of the written statement on payment of cost of Rs.3,000/- to the respondent. The petitioner shall pay the cost and file the written statement within a period



of one week from the date of receipt of a copy of this order. On payment of cost and filing written statement, the exparte order passed in I.A.No.684 of 2018 in O.S.No.178 of 2012 shall stand set aside. On default of payment of cost and filing written statement within a week, this petition will stand automatically dismissed.

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7.Since the suit is of the year 2012, on payment of cost and filing of written statement within a week, the learned Additional District Munsif cum Judicial Magistrate, Sivagiri, is directed to conduct trial of the suit in O.S.No.178 of 2012 on day-to-day basis and dispose of the same on merits and in accordance with law as expeditiously as possible, preferably within a period of four months from the date of receipt of receipt of a copy of this order.

8.With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

msa

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

1.The Additional District Munsif cum Judicial Magistrate,
Sivagiri.

Copy to

The Section Officer,V.R.Section,

Madurai Bench of Madras High Court, Madurai(2 copies).

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-12793[F] dated 22/03/2021)

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-13058[F] dated 23/03/2021)

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SRK(CO)

TR(24.04.2021) 3P 6C

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