



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 23.04.2021
Delivered On :15.06.2021
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) (NPD)No.2898 of 2018
and
C.M.P. (MD)No.12525 of 2018

Selvaraj .. Petitioner/ Petitioner/Defendant

Vs.

Vijayakumar .. Respondent/Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 17.09.2018 passed in I.A.No.60 of 2017 in O.S.No.153 of 2015 on the file of the learned Subordinate Judge, Kulithalai.

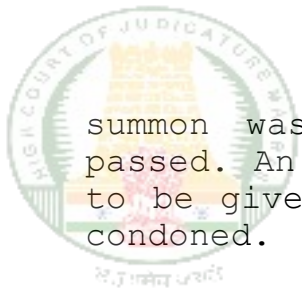
For Petitioner : Mr.R.Subramanian
For Respondent : Mr.K.Govindarajan

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.60 of 2017 in O.S.No.153 of 2015 dated 17.09.2018, on the file of the learned Subordinate Judge, Kulithalai.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff. The respondent herein has filed a money suit in O.S.No.153 of 2015 before the learned Sub Judge, Kulithalai claiming a sum of Rs.9,51,650/- (Rupees Nine Lakhs Fifty One Thousand Six Hundred and Fifty only) with interest. An exparte decree was passed in the suit. The petitioner has filed a petition in I.A.No.60 of 2017 to condone the delay of 355 days in filing the set aside petition. The learned Sub Judge dismissed the petition. Against which, the petitioner has preferred this revision petition.

3.On the side of the revision petitioner, it is stated that the petitioner obtained a loan from the respondent, who is doing auto finance business. A pro note was executed by the petitioner. Due to some problems, the lorry was handed over to the respondent to set right the balance amount with interest. By handing over the lorry the money transaction between the respondent and the petitioner was settled and that the petitioner was under the impression that the entire amount was settled. The petitioner failed to receive back the pro note given as a security for the loan. No



summon was served on the petitioner and an exparte decree was passed. An opportunity for the petitioner to put forth his case has to be given in the interest of justice and prayed the delay to be condoned.

4.On the side of the respondent, it is stated that this Court has ordered a stay on condition that the petitioner has to deposit Rs.5,00,000/- (Rupees Five Lakhs only) before the trial Court within a period of four weeks. The date of order is 27.12.2018 but the petitioner has failed to comply the condition till today and he is enjoying the benefits of stay order for the past two years. He has not approached this Court for modification of the condition or for extension of time. A person who is not obeying the order of this Court, is not entitled for any relief from this Court. The summon was sent to the petitioner and the address was correct. The petitioner is residing in the same address even now. Refusing to receive summon amounts to serving of summon. A paper publication was issued before the petitioner was set exparte.

5.On the side of the petitioner, it is stated that the petitioner has not refused the summon. The summon was returned by the Postal Department as 'no such person available in that address'.

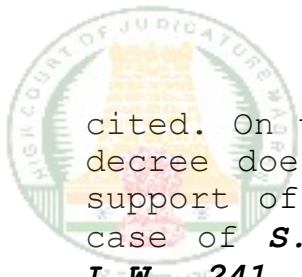
6.On the side of the respondent, it is stated that since summon was sent to the correct address, it should be the petitioner who gave such false information to the postman.

7.On the side of the respondent, it is stated that handing over the lorry is a cock and bull story created by the petitioner. The execution of pro note is admitted. Receiving the loan amount is admitted. The petitioner is disobeying the Court order. He is enjoying benefit of the stay order for the past two years. He is dragging on the proceedings and prayed the petition to be dismissed.

8.On the side of the petitioner, it is stated that the right to file an appeal cannot be taken away by imposing a condition to deposit. In support of his contention, the judgment of the Hon'ble Supreme Court in the case of **B.Himmatlal Agrawal v. Competition Commission of India** reported in (2018) 17 Supreme Court Cases 421 is cited.

9.The right of the appeal within the limitation period was discussed in this judgment. This revision is against the dismissal of a condone delay petition. Hence, this citation is not applicable to this case.

10.On the side of the petitioner, it is stated that an opportunity should be afforded by condoning the delay. In support of his contention, a judgment of this Court in the case in **S.Nirmaladevi v. T.R.Rangasamy** reported in 2017 (3) CTC 445 is



cited. On the side of the petitioner, it is stated that an exparte decree does not satisfy Section 2(9), as it contain no reason. In support of his contention, a judgment passed by this Court in the case of **S.Arul Dhas v. F.Hubert and another** reported in **2015 (3) L.W. 241** is cited. The subject matter in the above cases was execution of sale agreement and hence, this citations are not applicable to the case on hand.

11.The learned counsel for the petitioner would rely upon the judgment of this Court in the case **Yasothai v. Parameshwari** in **C.R.P. (MD)No.6 of 2020**. The above cited subject matter in revision petition was a partition suit. This is a money suit where in the petitioner has admitted the borrowal and the execution of the pro note. Hence, the facts of this case is different. This citation is not applicable to the present case.

12.It is seen that the notice in E.P. Proceedings was served on the petitioner on 26.02.2016. But there was a delay of 355 days in filing the petition to set aside the exparte order. The reason stated for the delay is sudden illness. The petitioner has not stated any particulars regarding the nature of the illness. No document regarding the illness was filed by the petitioner. There was no oral or documentary evidence to prove the sudden illness. The hospital where the petitioner took treatment and the period of treatment and the nature of treatment were not stated in the petition. Even in the revision, the petitioner has not mentioned the particulars regarding the period of treatment, nature of treatment and nature of illness. It is seen that the petitioner has not obliged the condition imposed by this Court in the order dated 27.12.2018. But he has produced the order copy before the trial Court. The petitioner is duty bound to prove the reason for each day delay. The petitioner has not proved the cause of delay.

13.In the above circumstances, there is nothing sufficient enough to interfere in the order passed in I.A.No.60 of 2017 in O.S.No.153 of 2015 dated 17.09.2018, on the file of the learned Subordinate Judge, Kulithalai. Hence, this Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No Costs.

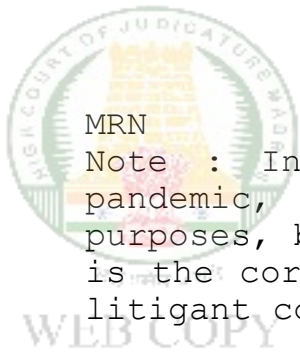
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Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



MRN

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 Sub Judge, Kulithalai.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-19302[F] dated 15/06/2021)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-19301[F] dated 15/06/2021)

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