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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2022
Pronounced on : 14.07.2022

CORAM

THE HONOURABLE Mrs. JUSTICE **S. KANNAMMAL**

C.R.P.(NPD).No.680 of 2020
and C.M.P.No.4117 of 2020

A.S.Jahangir .. Petitioner

Versus

1.M/s.Operating Lease and Hire Purchase Company Limited,
Vairams, No.112, Thyagaraya Road,
4th Floor, T-Nagar, Chennai-17.

2.M.S.Balaji .. Respondents

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order in I.A.No.7606 of 2017 in O.S.No.83 of 2017 dated 03.11.2018 on the file of the IV Additional City Civil Court, Chennai.

For Petitioner .. Mr.S.Ramesh Kumar
For R1 .. Mr.V.T.Narendiran

ORDER

The 2nd defendant in O.S.No.83 of 2017 (C.S.No.874 of 2001) on the file of the IV Additional City Civil Court, Chennai, is the revision petitioner herein.

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2. The 1st respondent/plaintiff herein has filed the above suit in C.S.No.874 of 2001 contending inter alia that the defendants have approached the 1st respondent/plaintiff for purchase of machinery on hire purchase. According to the 1st respondent/plaintiff, the 2nd respondent/1st defendant herein is the principal debtor and the 2nd defendant/revision petitioner herein stood as a guarantor guaranteeing due payment of the loan amount by the 1st defendant/2nd respondent. According to the plaintiff, an hire purchase agreement dated 12.12.1995 was executed between the plaintiff and the defendants pursuant to which, the 1st defendant paid certain amounts and thereafter committed default. Therefore, the plaintiff attempted to re-posses the secured assets. But, it was prevented by the defendants. The defendants filed O.S.No.4447 of 2000 before the V Assistant Judge, City Civil Court, Chennai, for permanent injunction, restraining the defendants from preventing the plaintiff to take possession of the machinery, pending the suit. Thereafter, several demands were made by the plaintiff, but the defendants neither surrendered the machinery nor paid the loan amount. Therefore, the suit was filed for recovery of a sum of Rs.12,53,964.96/- with interest at the

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rate of 36% per month from the date of plaint till the date of realisation.

3. It appears that the suit was decreed ex-parte on 23.06.2009 inasmuch as the defendants did not turn up to contest the suit.

4. It is seen from the records that the ex-parte decree could not have been executed by the plaintiff inasmuch as the address of the defendants is not known to the plaintiff. At this stage, the suit in C.S.No.874 of 2001 stood transferred to the Court below and re-numbered as O.S.No.83 of 2017 on the ground of enhance of pecuniary jurisdiction.

5. It is at this stage, the revision petitioner/2nd defendant has filed instant I.A.No.7605 of 2017 before the Court below praying to set aside the ex-parte decree and judgment dated 23.06.2009 and to restore the suit. The petitioner also filed I.A.No.7606 of 2017 praying to condone the delay of 2555 days in filing the application to set aside the ex-parte decree and judgment dated 23.06.2009 passed by this Court in C.S.No.874 of 2001.

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6. In the affidavit filed in support of I.A.No.7606 of 2017 it was stated that the petitioner never received any notice in the suit and he was not aware of the pendency of the suit at all. He was in service working with LIC Corporation and until his retirement on 13.06.2010, he did not receive any notice. After his retirement, he settled down at Chennai and residing along with his family. While so, only on 14.06.2016 the Recovery Officer attached the plaintiff Company and called upon him to meet him and it was on that date only, he came to know about ex-parte decree that has been passed in the suit on 23.06.2009. Even though, he requested for a copy of the decree and judgment, it was not served on him. Therefore, the application in I.A.No.7606 of 2017 was filed praying to condone the delay of 2555 days in filing the application to set aside the ex-parte decree dated 23.06.2009. The application was contested by the plaintiff by specifically contending that in the suit notice was served on the defendants and on behalf of the defendants an Advocate by name M/s.A.Babu and Murali also entered appearance on 17.01.2002 itself. Having engaged an advocate, the defendant failed to defend the suit by filing written statement. It is in those circumstances, the suit came to be

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allowed ex parte by setting the defendants ex-parte. Therefore, the reasons stated in the affidavit filed in support of I.A.No.7606 of 2017 are false and in-correct when the petitioner has not come forward with clean hands, he is not entitled for condonation of delay. Even otherwise the reasons stated for condoning of delay are not acceptable and therefore, he prayed for dismissal of the application.

7. The trial Court upon hearing upon hearing the counsel on both sides, dismissed the application filed by the revision petitioner by specifically pointing out that the revision petitioner/2nd defendant had engaged a counsel in the suit and thereafter he did not show to contest the suit. In such circumstances, the reasons assigned by the petitioner/2nd defendant for condonation of delay, cannot be accepted. The petitioner has filed the IAs by suppressing the material particulars and accordingly, the Court below dismissed the applications.

8. The learned counsel appearing for the revision petitioner would vehemently contend that the Court below ought to have considered that the petitioner is only a guarantor and he was not a beneficiary of the

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loan availed by the 1st defendant in the suit. The petitioner is innocent and he was falsely implicated in the suit. Even though the petitioner has assigned very many reasons for condonation of the delay, the Court below failed to consider it in a proper manner. The petitioner being a guarantor must be given an opportunity to contest the suit on merits and to prove his bona fides. The Court below had deprived such an opportunity to the petitioner to contest the suit and it calls for interference by this Court. Accordingly, the learned counsel for the petitioner prayed for allowing this revision petition.

9. On the other hand, the learned counsel for the 1st respondent/plaintiff would vehemently contend that the petitioner/2nd defendant has come forward with unclean hands by suppressing the material particulars relating to the engagement of a counsel to defend the suit. He pointed out that in the affidavit filed in support of I.A.No.7606 of 2017, it was the definite stand of the revision petitioner that he was not served notice at all. On the other hand, notice was served and he has also engaged a counsel by name M/s.A.Babu and Murali and they have also filed vakalat on behalf of the revision petitioner/2nd defendant when the

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revision petitioner has come up with false plea by suppressing the material particulars, he is not entitled for extension of the discretionary remedy conferred upon this Court. The 1st respondent/plaintiff herein has advanced huge amount as loan to the 1st defendant in the suit to which the revision petitioner/2nd defendant stood as guarantor. This was not denied by the revision petitioner in the application in I.A.No.7606 of 2017 filed for condonation of delay. The liability of the revision petitioner/2nd defendant is a co-terminus and he cannot be exempted from the prosecution in the suit. A huge amount is now payable by the defendants to the plaintiff and the present application has been filed only to drag on the proceedings. Therefore, the learned counsel for the 1st respondent/plaintiff prayed for dismissal of the revision petition.

10. In support of his contentions, the learned counsel for the revision petitioner placed reliance on the following decisions:-

1.**Collector Land Acquisition, Anantnag and another Vs. MST.Katiji and Others,** reported in **1987 AIR 1353**.

2.**Mohammed Aslam and Others Vs. C.N.A.Gowdhaman,** reported in **2005 (2) CTC 766**.

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3.**K.Shankar Vs. The Oriental Insurance Company Ltd and 2 Others,** (2005 4 MLJ 666)

4.**Padmavathi Ammal and Another Vs. Dhinakara Rao and Others.**

11. By relying upon the above, it is contended that the length of delay need not weigh the mind of this Court. Some times, the delay of shortest range may be uncondonable for want of acceptable explanation and when there is delay of very long range can be condoned by accepting the satisfactory explanation offered. Thus, the length of delay is not a criteria and a liberal construction of the Phrase "Sufficient cause" is required to be made by this Court.

12. Heard the learned counsel on both sides and perused the materials available on record.

13. At the outset, it must be stated that the suit was filed in the year 2001. In the suit, notice was served on the defendants. On receipt of notice, the revision petitioner/2nd defendant engaged a counsel by name M/s.A.Babu and Murali to defend the suit. However, written statement

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was not filed as the defendants failed to turn up the trial Court, which passed an ex-parte decree dated 23.06.2009. In other words, after eight years of filing the suit, the defendants were set ex-parte.

14. The plaintiff, even though, armed with an ex-parte decree could not execute it inasmuch as the whereabouts of the defendants are unknown. After establishing contact with the 2nd defendant the officer of the plaintiff company called upon him and informed him about the ex-parte decree passed against him. It is to be mentioned that it is not that the revision petitioner/2nd defendant is not aware of the filing of the suit at all. As mentioned above, the revision petitioner/2nd defendant had engaged an advocate and it stands testimony to the fact that notice had in fact been served on the revision petitioner/2nd defendant. Therefore, the entire averments made by the revision petitioner/2nd defendant in I.A.No.7606 of 2017 are too big to be swallowed by him.

15. The learned counsel appearing for the revision petitioner relied on a decision in "***Mohammed Aslam and Others Vs. C.N.A.Gowdhaman",*** reported in *2005 (2) CTC 766*, it is no doubt true

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that length of delay is not a criteria to be considered but the explanation offered can be taken note of. It is the settled principle of law that a litigant must not be ousted from contesting the case merely on technicalities. At the same time, in the present case, it must be seen that the suit was filed in the year 2001 and the defendants were set ex-parte in the year 2009. The revision petitioner/2nd defendant said to have heard about the ex-parte decree passed in the year 2016. The suit was filed for recovery of money based on an hire purchase agreement. The amount outstanding and payable to the plaintiff is huge, the defendants having entered into an hire purchase agreement failed to repay the amount payable to the plaintiff. Even the suit filed by the plaintiff was not contested and it resulted in passing an ex-parte decree.

16. On a cumulative assessment of all the above facts, this Court is of the considered view that this is not a fit case where this Court finds that it is justifiable in condoning of the delay. The reasons assigned by the revision petitioner / 2nd defendant are not only satisfactory. Besides the revision petitioner/2nd defendant had suppressed the factum of engagement of an advocate to contest the case. Having engaged an

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advocate, it is the duty of the revision petitioner/2nd defendant to follow the case till its logical end and on the other hand, in the application filed in I.A.No.7606 of 2017 as well as in the present revision it has been repeatedly contended that no notice was served on the revision petitioner and he was deprived of an opportunity. When such an false averments were made by the revision petitioner/2nd defendant, extending the discretionary power conferred upon this Court under Section 5 of the Limitation Act is not feasible.

17. Accordingly, this Civil Revision Petition stands dismissed, confirming the the fair and decreetal order in I.A.No.7606 of 2017 in O.S.No.83 of 2017 dated 03.11.2018 on the file of the IV Additional City Civil Court, Chennai. No Costs. Consequently, connected Miscellaneous Petition is closed.

14.07.2022

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To
The Judge, IV Additional City Civil Court, Chennai.

S.KANNAMMAL, J.

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Pre-delivery Judgment in
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