



C.R.P.Nos.745 and 746 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2022

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.745 and 746 of 2020 &
C.M.P. No.3951 of 2020 in
CRP No.745 of 2020

A.Vanaja

... Petitioner in both the Petitions

Vs.

N.Chandrasekar

... Respondent in both the Petitions

Civil Revision Petitions are filed under Article 227 of Civil Procedure Code to set aside the order of the Court of Sessions (Fast Track Mahila) Namakkal made in I.A.Nos.1 and 2 of 2019 in O.S.No.158 of 2017 dated 01.11.2019 and 22.11.2019 and consequently allow the applications in I.A.Nos.1 and 2 of 2019 in O.S.No.158 of 2017.

For Petitioner : Mr.V.P.Sengottuvel

For Respondent : No appearance



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COMMON ORDER

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Since the issue involved in both the Civil Revision Petitions are one and the same, they are taken up together and a common order is passed.

2. The present Civil Revision Petitions have been filed to set aside the order of the Court of Sessions (Fast Track Mahila) Namakkal made in I.A.Nos.1 and 2 of 2019 in O.S.No.158 of 2017 dated 01.11.2019 and 22.11.2019 and consequently, allow the applications in I.A.Nos.1 and 2 of 2019 in O.S.No.158 of 2017.

3. The suit is filed by the respondent / plaintiff for recovery of money with interest and costs. The petitioner is the defendant in the suit. In the plaint, it has been alleged that the petitioner / defendant had borrowed a sum of Rs.25,00,000/- on 31.01.2016 with interest at the rate of 1% for Rs.100/-. The petitioner herein, who is the defendant, had filed the written statement denying all the averments by stating that the promissory note produced along with the plaint is a fabricated document and the plaintiff is a house wife aged about 60 years and the defendant had no necessity to borrow any amount from any 3rd party, as she has self sufficient income and a self content life and that the suit was filed by the respondent / plaintiff without any cause of action.



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4. In spite of adjournment being granted twice for appearance on behalf of the respondent on 04.08.2020 and on 06.09.2022, there is no representation on the side of the respondent. Therefore, this Court is inclined to take up the present case and pass appropriate orders.

5. The learned counsel for the petitioner would submit that the suit was posted for trial on 12.12.2018 and the petitioner / defendant was not present. The petitioner was called absent and set aside. P.W.1 was examined on behalf of the respondent / plaintiff and the evidence was closed on 12.12.2018. The arguments were heard on the side of the respondent / plaintiff and on 18.12.2018 ex parte Judgment was passed. The petitioner, who is the defendant was not well on 12.12.2018, therefore, he was not able to contact his advocate and instruct him about this case. Thereafter, I.A.No.1 of 2019 was filed under Section 5 of the Limitation Act to condone the delay of 81 days in filing the set aside petition. The court below, upon hearing the submissions and perusing the documents placed on record, on 01.11.2019 in I.A.No.1 of 2019, [viz., petition filed by the petitioner / defendant under Section 5 of the Limitation Act to condone the delay of 81 days in filing the set aside petition] allowed the said petition by directing to pay a sum of Rs.1,000/- to the respondent on or before



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14.11.2019 and directed to list the matter on 15.11.2019. Further, the husband of the petitioner, namely, Arumugam aged 60 years, has filed an affidavit before the court below stating that in order to pay the said cost on or before 14.11.2019, he tried to contact the counsel for the respondent, but could not find him and hence he was unable to pay the cost within the stipulated time. Therefore, he handed over the amount to the learned counsel for the petitioner and the said counsel also tried to pay the cost on 15.11.2019 to the respondent / plaintiff's counsel and the respondent endorsed in the memo on the same day, viz., 15.11.2019 stating that the respondent / plaintiff is not willing to receive the amount due to preparation for revision petition by the respondent / plaintiff. However, the court below without considering the affidavit filed by the petitioner, memo dated 15.11.2019 and the endorsement in the memo, had chosen to dismiss the Interlocutory Applications, hence the petitioner has come forward with the present Civil Revision Petitions.

6. Heard the learned counsel for the petitioner and perused the documents placed on record.



7. It is relevant to note that the learned counsel for the respondent / plaintiff has not received the cost of Rs.1,000/-, which was directed to be paid by the petitioner to the respondent. Hence the petitioner / defendant has filed a Lodgement Schedule before the court below on 15.11.2019 and also paid the same before the court below. Since the signature of petitioner / defendant has not been found in the Lodgement Schedule, the Registry of the court below had returned the same on 19.11.2019. Thereafter, the return was complied and re-presented on 20.11.2019. On 22.11.2019, the said I.A.No.1 of 2019 was dismissed by quoting that '*Cost not paid as on today as conditional order is not complied. Hence this petition is dismissed*'. Also, I.A.No.2 of 2019 was taken up on 22.11.2019 and dismissed by stating that '*As petition under Section 5 Limitation Act in I.A.No.1 of 2019 is dismissed, this petition is also dismissed as not maintainable.*'

8. It is not in dispute that the petitioner / defendant has filed a petition in I.A.No.1 of 2019 to condone the delay of 81 days in filing the set aside petition, the said petition was allowed on condition to pay a sum of Rs.1,000/- to the respondent on or before 14.11.2019 and directed to call on 15.11.2019, accordingly, the husband of the petitioner, viz., Arumugam



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had tried to contact the respondent, but could not meet him, hence handed over the same to learned counsel for the petitioner and thereafter, the learned counsel for the petitioner tried to contact the respondent and filed a memo, however, the respondent refused to receive the same and endorsed in the memo stating that '*Not willing to receive the cost. Preparing for CRP*'. That apart, when the petition has been filed by the petitioner under Sections 148 & 151 CPC along with Lodgement schedule on 15.11.2019, the respondent prayed for time for filing counter and the said lodgement schedule was returned for want of signature of the petitioner on 19.11.2019, thereafter the said return was also complied with on 20.11.2019. However, in the decretal order it has been stated as following:-

'Cost not paid call on 19.11.2019' on 15.11.2019 ;

'Petition to deposit the cost in court filed in office on 15.11.2019 is returned.

Call on 22.11.2019' on 19.11.2019;

'Cost not paid as on today as conditional order is not complied. Hence this petition is dismissed' on 22.11.2019.

9. From the above it is clear that the petitioner had taken steps to comply with the order passed by the court below, viz., paying the cost of



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Rs.1,000/- right from 14.11.2019, further, when the court below itself had stated that *"Petition to deposit the cost in court filed in office on 15.11.2019 is returned. Call on 22.11.2019"* the court below ought to have granted further time for receiving the amount by the counsel concerned or received the said cost which was filed by way of lodgement petition, the affidavit filed by the petitioner would also indicate that when steps taken to pay the money to the respondent counsel, the respondent side did not receive the same and stated that they are preferring Civil Revision Petition and the same is evidenced in the memo, which was filed by the petitioner and endorsed by the respondent, that being the case, the court below ought to have given a chance to the petitioner for payment of the said cost and unnecessarily, this matter has been dismissed in the year 2019 and it has been dragged till date, as this Court finds that the learned Sessions (Fast Track Mahila) Judge, Namakkal has not looked into the matter by giving some opportunity to the petitioner, this Court is inclined to allow this petition.

Accordingly, the present Civil Revision Petition is allowed and I.A.No.1 of 2019 filed by the petitioner to condone the delay of 81 days in filing to set aside petition is allowed and the delay is condoned. Further,



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I.A.No.2 of 2019 filed by the petitioner to set aside the exparte decree dated 18.12.2018 passed against the petitioner in O.S.No.158 of 2017 is allowed. Consequently, O.S.No.158 of 2017 is restored to the file of learned Sessions Judge, [Fast Track Mahila Court], Namakkal. Connected miscellaneous petition is closed. No costs.

07.12.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd



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V.BHAVANI SUBBAROYAN, J.,

ssd

To

The Sessions (Fast Track Mahila) Judge,
Namakkal

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