



C.R.P.No.2225 of 2020
and C.M.P.No.14014 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2225 of 2020

and

C.M.P.No.14014 of 2020

P.Kaluvarayan

... Petitioner

Vs.

G.Rangasamy Nayakar

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal orders dated 29.09.2020 passed in I.A.No.107 of 2017 in O.S.No.79 of 2010 on the file of the Principal District Munsif Court, Thirukovilur.

For Petitioner : Ms.R.Pushpalatha

ORDER

The revision petition is filed to set aside the fair and decreetal orders dated 29.09.2020 passed in I.A.No.107 of 2017 in O.S.No.79 of 2010 on the file of the Principal District Munsif Court, Thirukovilur.



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2.The revision petitioner is the defendant in O.S.No.79 of 2010 on the file of the Principal District Munsif Court, Thirukovilur. The respondent filed the suit for recovery of a sum of Rs.80,010/- together with interest at the rate of 9% per annum due under a promissory note from the revision petitioner/defendant.

3.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

4.The case of the plaintiff is that the defendant borrowed a sum of Rs.63,000/- on 01.03.2007 and executed a promissory note on the same date promising to repay the principal together with interest at the rate of 9% per annum on demand by the plaintiff or to his order. According to the plaintiff, despite repeated demands made by him, the defendant did not pay any amount either towards principal or interest and therefore, he was



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forced to send a legal notice dated 26.02.2010 to the defendant calling upon him to pay the amount due under the promissory note. Since the said notice did not evoke any response, he filed the suit for recovery of money due under the promissory note.

5.The defendant remained absent and was set *ex parte* and an *ex parte* decree was passed on 11.08.2011 by the learned Principal District Munsif, Thirukovilur. Subsequently, the respondent/plaintiff filed E.P.No.155 of 2011 under Order XXI Rule 11 (2) of CPC to execute the decree in which a notice was served on the defendant on 13.12.2013. The defendant entered appearance through his counsels namely Mr.T.C.G.Rajendran and Mr.C.Raja Pandian in the Executing Court on 10.01.2014 and thereafter, they filed a petition under Order IX Rule 13 CPC to set aside the *ex parte* decree passed against him along with a petition under Section 5 of the Limitation Act to condone the delay of 1887 days in filing the petition under Order IX Rule 13 CPC. In the said petition, the revision petitioner had contended that he came to know about



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the passing of the *ex parte* decree only on 10.11.2016 and that he was never served with summons in the suit in O.S.No.79 of 2010.

6.The respondent filed a detailed counter and after analysing the oral and documentary evidence adduced on both sides the trial Court dismissed the application filed by the present revision petitioner vide its order dated 29.09.2020, aggrieved over which the present Civil Revision Petition is filed.

7.Heard Ms.R.Pushpalatha, learned counsel appearing for the revision petitioner.

8.Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent, either in person or through a counsel.

9.Ms.R.Pushpalatha, learned counsel for the revision petitioner would contend that the revision petitioner came to know about the passing



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of *ex parte* decree only on 10.11.2016 and thereafter, he filed the petition to set aside the *ex parte* decree along with the petition under Section 5 of the Limitation Act in I.A.No.107 of 2017.

10.At the outset, it may be observed that the suit in O.S.No.79 of 2010 was filed based on a promissory note executed by the defendant for a sum of Rs.63,000/-. A perusal of the records shows that the defendant was served with summons in the said suit. Since he did not appear before the Court he was set *ex parte* and an *ex parte* decree was passed on 11.08.2011. In E.P.No.155 of 2011 notice was sent to the revision petitioner/defendant. Since he refused to receive the notice it was pasted on the outer door of his house on 13.06.2013. Thereafter, the revision petitioner, as already observed, entered appearance through two counsels namely Mr.T.C.G.Rajendran and Mr.C.Raja Pandian.

11.In the circumstances, the contention of the revision petitioner that he came to know about the passing of *ex parte* decree in O.S.No.79 of 2010 only on 24.11.2016 is a blatant lie. This aspect has been dealt with

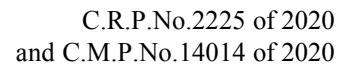


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WEB COURT by the trial Court in extenso.

12. In the decision in *Sundar Gnanaolivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu*) reported in *2003 1 LW 585*, a Division Bench of this Court held that when the averments in the affidavit are untrue, lack bona fides, then the case falls within the exception to the Rule of Liberal approach and it does not deserve the liberal approach formula in matters relating to condonation of delay. In this case, the Division Bench of this Court followed the decision of the Honourable Supreme Court reported in *M.K.Prasad vs. P.Arumugam (2001) 6 Supreme Court Cases 176*. In Para Nos. 14-A, the Division Bench of this Court held thus:-

"14.If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further



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Index: Yes/No
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Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.
mtl

To

- 1.The Principal District Munsif Court, Thirukovilur.
- 2.The Section Officer, VR Section, High Court, Madras.

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