



CRP(MD)No.1904 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP.(PD).(MD)No.1904 of 2022
and
C.M.P(MD).No.8578 of 2022

M.Parvathy : Petitioner/Petitioner/Defendant

Vs.,

O.Pitchai : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 07.07.2022 in I.A.No.1 of 2022 in O.S.No.128 of 2014 passed by the learned Subordinate Judge, Theni.

For Petitioner : Mr.M.A.M.Raja

For Respondent : Mr.P.R.Prithviraj

ORDER

This civil revision petition is filed against the order dated 07.07.2022 in I.A.No.1 of 2022 in O.S.No.128 of 2014 passed by the learned Subordinate Judge, Theni.



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2. The petitioner is the defendant in O.S.No.128 of 2014, which is pending on the file of the learned Subordinate Judge, Theni. The said suit was filed by the respondent/plaintiff for recovery of money based on the promissory note for a sum of Rs.3,00,000/-. The petitioner/defendant was earlier set *ex-parte* on 20.03.2017 and thereafter, she filed a petition to set aside the *ex-parte* decree with a delay of 748 days and the same was dismissed by the trial Court. Challenging the same, the petitioner has preferred a civil revision petition before this Court in CRP(NPD)(MD).No. 453 of 2018 and the same was allowed by this Court by order dated 07.03.2018 on condition that the petitioner shall deposit a sum of Rs.1,50,000/- to the credit of O.S.No.128 of 2014 on or before 23.03.2018. The petitioner has deposited the amount as directed by this Court. However, she failed to cross-examine the plaintiff on 04.02.2020 and therefore, she was again set *ex-parte* by the trial Court on 04.02.2020. Thereafter, the petitioner filed this above IA.No.1 of 2022 to set aside the *ex-parte* order dated 04.02.2020 with a delay of 750 days and the same was dismissed by the trial Court by its fair and decreetal order dated 07.07.2022. Aggrieved over the same, the present revision petition is filed.



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3. The learned counsel for the petitioner submits that the petitioner is a Sweeper working in the Municipality and she borrowed a sum of Rs.1,00,000/- from the respondent on 27.08.2012 by executing a registered mortgage deed on her property in S.No.1657/1A1 on 27.08.2012. The respondent had filed two suits based on the mortgage deed dated 27.08.2012 in O.S.No.129 of 2014 and the present suit in O.S.No.128 of 2014 based on the pro-note dated 04.09.2012. The earlier suit filed in O.S.No.129 of 2014 was also decreed *ex-parte*. However, in the execution petition, the matter was referred to Lok Adalat and this petitioner has settled the entire amount to the respondent/plaintiff in that suit. However, in the present suit, the petitioner was under the impression that both the suits were closed in view of the payment made before the Lok Adalat and only at a later point of time, the petitioner came to know about the pendency of the present suit in O.S.No.128 of 2014. She also raised certain issues against her previous counsel that her son questioned the counsel for not informing the procedures, for which, the counsel lodged a criminal complaint as against the petitioner's son before the Theni Police Station. Therefore, advocates



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from Theni Bar are not prepared to defend her case in O.S.No.128 of 2014 and therefore, the petitioner could not cross-examine the plaintiff, when the case was posted for cross-examination on 04.02.2020, for which, she was set *ex-parte* again. The petitioner has also approached the Legal Services Authority and now, contesting the case through the counsel appointed by the legal services authority.

4. The learned counsel further submits that period of delay calculated by the trial Court as 750 days including the Covid period is not proper that the suit was set *ex-parte* on 04.02.2020 and the Covid lock down period ought to have been deducted in view of the decision of the Hon'ble Supreme Court in a *suo motu* petition, (reported in **2022 5 SCC 112 (Prakash Corporates Vs. Dee Vee Projects Limited)**).

5. The learned counsel for the respondents submits that the trial Court has considered the conduct of the petitioner in evading the proceedings from the year 2014 has rightly dismissed the application and there is no reason to interfere with the order.



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6. The learned counsel submits that the suit was filed in the year 2014 and the petitioner was set *ex-parte* in the year 2017. The application filed to set aside the *ex-parte* order was dismissed by the trial Court, however, allowed by this Court on condition that she shall deposit a sum of Rs. 1,50,000/-. She also deposited the sum of Rs.1,50,000/- before the trial Court. Even thereafter, she failed to cross-examine the plaintiff and therefore, she was again set *ex-parte* on 04.02.2020 and this application also filed with a delay of 750 days and she has not offered any proper reason for this inordinate delay.

7. This Court considered the rival submissions made.

8. The petitioner was earlier set *ex-parte* in the year 2017 and the same was set aside by this Court on certain conditions. However, even thereafter, she failed to cross-examine the plaintiff on the date when it was posted for cross-examination of the plaintiff. Therefore, the second *ex-parte* order was passed on 04.02.2020. It appears that there is some strained



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relationship between the petitioner and her previous counsel and there were some police complaints also. The petitioner claims that in view of the complaint lodged by her previous counsel, the advocate practicing at Theni Bar are not inclined to defend her case before the trial Court when it was posted for cross-examination of the plaintiff. The fact remains that the petitioner is now defended through the counsel appointed by Legal Aid Services Authority.

9. Considering the facts and circumstances of the case, in order to provide one more opportunity to the petitioner, this Court is inclined to allow this revision petition with a cost of Rs.10,000/- (Rupees Ten Thousand only), which has to be paid by the petitioner to the respondent and the trial Court is directed to restore the suit and to conclude the same as expeditiously as possible.



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10. With the above direction, the Civil Revision Petition is allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

07.12.2022

Index : Yes / No
Internet : Yes / No
Rmk

To
The Subordinate Judge, Theni



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B.PUGALENDHI, J.

Rmk

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