



A.S.No.186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :22.08.2023

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CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

A.S.No.186 of 2023
and CMP.No.7522 of 2023

Palaniammal

... Appellant/defendant

Vs.

Selvi

... Respondent/plaintiff

Prayer: First Appeal filed under Section 96 of Civil Procedure Code., against the judgement and decree in O.S.No.102 of 2021, on the file of III Additional District Judge, Kallakurichi, dated 26.09.2022.

For Petitioner : Mrs.R.Poornima

For Respondent : Mr.N.Gnanalingam

ORDER

This First Appeal has been filed by the appellant/defendant who suffered the judgement and decree in a money suit.

2. The brief facts of the case before the trial Court is as follows:

(a) The case of the plaintiff is that the defendant had borrowed an amount



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of Rs.10,00,000/- and executed a pro-note on 07.12.2018, agreeing to pay interest at the rate of 9 percent per annum. Since the defendant did not repay the amount, the plaintiff had sent legal notice through an advocate on 12.10.2021 and the defendant has given reply to the said notice on 19.12.2021, with false averments. Since the defendant has not paid the amount, the plaintiff had filed a money suit for recovery of amount of Rs.12,63,000/- with further interest at the rate of 9 percent.

(b) The suit in O.S.No.102 of 2021 was taken up on the file of the 3rd Additional District Judge, Kallakurichi. Since the defendant did not file the written statement, she was set ex-parte. Subsequently, she had filed I.A.No.128 of 2022, seeking to set aside the ex-parte order and that the trial Court had passed a conditional order directing the defendant to pay an amount of Rs.4,000/- to the District Legal Services Authority. However since the conditional order was not complied with, a decree was passed. Against the judgement and decree, this appeal has been filed.

3. The learned counsel for the appellant/defendant would submit that the appellant was set ex-parte and later she filed a petition to set aside the ex-parte order and a conditional order was passed in I.A.No.128 of 2022 and since



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she was suffering from diabetes, she was unable to comply with the conditional order. Therefore, she had filed an application for extension of time. However, the trial Court had refused to accept the same. Against which, the appellant had filed CRP.No.3523 of 2022 and while the CRP was pending before the Court, the trial Court had passed ex-parte judgement and decree. He would further submit that the appellant was not given an opportunity to defend the case and thereby, the present appeal has been filed.

4. The learned counsel for the respondent/plaintiff would submit that he has no objection in the appeal being allowed and the matter being remitted back to the trial Court for consideration of the suit on merits. He would submit that a time frame may be fixed to complete the trial.

5. Heard the learned counsel for the appellant and learned counsel for the respondent.

6. The only point to be determined in this appeal is as to whether the appeal suit has to be allowed or not?



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7. A perusal of the records shows that no sufficient opportunity has been given to the appellant/defendant to defend her case before the trial Court which is also fairly conceded by the learned counsel for the respondent and he also has no objection in the appeal being allowed and the matter being remitted to the trial Court for consideration of the suit on merits.

8. In view of the above, the ex-parte judgment and decree passed in O.S.No.102 of 2021 dated 26.09.2022 by the III Additional District Judge, Kallakurichi, is set aside and the appeal suit stands allowed and O.S.No.102 of 2021 is remanded back to the trial Court for consideration on merits, after affording sufficient opportunity to both sides. The trial Court is also directed to complete the trial in O.S.No.102 of 2021 as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

Internet : Yes/No
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A.D.JAGADISH CHANDIRA, J.

mpa

To

- 1.The III Additional District Judge, Kallakurichi.
- 2.The Public Prosecutor,
High Court, Madras.

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