



C.R.P. (NPD) No. 1164 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HON'BLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P. (NPD) No. 1164 of 2019

and

C.M.P. No. 7474 of 2019

G.Chinnapillai

... Petitioner

Vs.

P.Ramasamy

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India to allow the above civil revision petition by setting aside the fair and decreetal order dated 12.11.2018 made in I.A. No. 712 of 2016 in O.S. No. 158 of 2014.

For Petitioner : Mr. V.R.Annagandhi

ORDER

This revision arises against the order passed in I.A. No. 712 of 2016 in O.S. No. 158 of 2014 by the Principal Subordinate Judge, Namakkal. The suit in O.S. No. 158 of 2014 has been filed for recovery of a sum of Rs. 1,19,150/-. The suit is based on a promissory note.

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2. The promissory note had been executed for a sum of Rs.1,00,000/-

by one Palanisamy, the son of the defendant. The said Palanisamy had passed away in a road accident on 13.05.2014. The civil revision petitioner /defendant succeeded to his estate. On that score, the suit had been presented to proceed against the successor in interest of the original debtor, Palanisamy.

3. The defendant did not file her written statement and therefore, she was set exparte. She filed an application in I.A. No. 712 of 2016 to condone the delay of 298 days in filing the application to set aside the exparte decree. She also took out an application also under Order IX Rule 13 of Code of Civil Procedure, 1908. After receipt of the counter filed by the plaintiff, the Court below allowed the application on the following terms:-

- (i) the written statement should be filed within a period of 1 month; and
- (ii) an amount of Rs.29,788/- should be deposited within a period of 1 month.

Challenging the same, the civil revision petition has been presented.



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4. Mr. V.R.Annagandhi, learned counsel appearing for the petitioner would submit that the condition is onerous and, therefore, it requires interference in the hands of this Court.

5. Here is a case where the defendant has not filed the written statement at all. She, as the mother of the deceased Palanisamy, is answerable to the extent she has succeeded to his estate.

6. The trial Court has exercised its discretion and has condoned the delay and has also directed the defendant to come forth with her defence. It has balanced the interest of the plaintiff by directing the defendant to deposit a sum of Rs.29,788/-. The said condition has been imposed in order to ensure that the defendant cooperates with the disposal of the suit.

7. Be that as it may, it is an exercise of the discretion of the trial judge. The imposition of the cost of 1/4th of the decree amount and that too only by way of deposit is not onerous. I feel the condition is neither capricious nor illegal nor arbitrary.



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8. The defendant is granted time till 31.08.2023 to deposit a sum of Rs.29,788/- and also to file her written statement. The suit, being of the year 2014, the learned trial Judge is requested to give it priority and have the same disposed of at the earliest, in any event, on or before 28.02.2024.

9. With the above extension of time, this civil revision petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

04.07.2023

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Maya

NCS : Yes/No

Index : Yes/No

To

1. The Principal Subordinate Judge,
Namakkal.



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V.LAKSHMINARANAN, J.

Maya

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