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C.R.P.(NPD)Nos.1936 & 1933 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)Nos.1936 & 1933 of 2019

A.Karthikeyan

.. Petitioner in both CRPs

VS

Natarajan

.. Respondent in both CRPs

Petitions filed under Section 115 of the Civil Procedure Code against the dismissal of I.A.Nos.334 & 335 of 2018 in O.S.No.346 of 2015 dated 09.11.2018 on the file of IV Additional District Judge, Coimbatore.

(In both CRPs)

For Petitioner : Mr.B.Aravinthan

For Respondent : No Appearance

COMMON ORDER

O.S.No.346 of 2015 was filed for recovery of Rs.11,00,000/- together with interest. It was presented against one Anandan. The said Anandan passed away and his legal representatives A.Jagadeesh and



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A.Karthikeyan were impleaded as parties to the suit. The petitioner before me is the third defendant, Karthikeyan. According to him, he did not receive the summons and he was informed of the exparte decree only in the connected criminal case.

2.I heard Mr.B.Aravinthan, learned counsel appearing for the petitioner.

3.The learned counsel appearing for the petitioner would urge that the summons were never served on his client and therefore, there is a delay of 271 days, which the trial Court had erroneously dismissed. He would plead for the civil revision petition to be allowed and would inform the Court that as against the second defendant, the exparte decree was set aside and the suit is posted for trial on 01.09.2023.

4.It is seen that the pronote was signed by the father and his legal heirs are responsible for its repayment of the money, from and out of the estate, they have received from him.

5.The learned Judge has found that despite intimation given, the third defendant did not bother to come to the Court and contest the suit. He has admitted that in the criminal case in C.C.No.683 of 2017 filed by the respondent, he received the proof affidavit on 17.11.2017. Even thereafter, he did not move the application immediately and moved it only



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on 02.01.2018. Consequently, the trial Court dismissed the application.

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6.Considering the fact, the petitioner is a legal representative of the deceased borrower and also considering the fact that the exparte decree against D2 has been set aside and the matter is posted for examination on 01.09.2023. I am inclined to condone the delay and set aside the exparte decree on the condition that the petitioner deposits Rs.5.5 lakhs namely, 50% of the principal amount within a period of four (4) weeks from today. An additional condition is imposed that the petitioner shall file his written statement within a period of four (4) weeks thereafter. In case, he fails to comply with any one of the conditions, these civil revision petitions will stand dismissed.

7.With the above directions, these civil revision petitions are allowed. No costs.

28.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The IV Additional District Judge,
Coimbatore.

V. LAKSHMINARAYANAN,J.



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