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C.R.PPD.No.1185 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1185 of 2023

a n d

C.M.P.Nos.8161 and 8162 of 2023

S. Radhakrishnan

...

Petitioner

Vs

G.S.Krishnan

...

Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the docket order, dated 14/3/2023 made in I.A.No.1 of 2021 in O.S.No.5719 of 219 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioner

...

Mr.R.Thiagarajan

For respondent

...

Mr.K.B.Babu

ORDER

This petition is filed challenging the directions of the learned VI Additional Judge, City Civil Court, Chennai in I.A.No.1 of 2021 dated 14.03.2023 in O.S.No.5719 of 2019 directing the petitioner to deposit a



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sum of Rs.10 lakhs, as a condition for setting aside ex parte decree dated 15.10.2019.

2. The facts in brief as could be gathered would go to show that the respondent/plaintiff has filed C.S.No.550 of 2018, under OrderVII Rule 1 of Original Side Rules r/w. Order XXXVII Rule 1 of the Code of Civil Procedure as a summary suit on the strength of a promissory note for a recovery of Rs.84,72,332/-. On account of enhancement of pecuniary jurisdiction of the learned District Judge, C.S.No.505 of 2008 came to be transferred to the Special Civil Court, Chennai and numbered as O.S.No.5719 of 2019 and assigned to Additional Judge, City Civil Court, Chennai.

3. Subsequent to taking the case on file by the City Civil Court, Chennai, notice has been sent to the petitioner/defendant to appear in O.S.No.5019 of 2019 and the said notice returned unserved with an endorsement "LEFT". The learned District Judge, on considering the same, set the petitioner/defendant ex parte and ex parte decree has been passed on 15.10.2019 against the petitioner/defendant.



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4. Subsequent to the passing of ex parte decree on 15.10.2019 in O.S.No.5719 of 2019, the respondents/plaintiffs have initiated execution proceedings in E.P.No.3702 of 2021 against the petitioner/defendant thereby, the petitioner/defendant came to know about passing of ex parte decree against him in O.S.No.5719 of 2019 on 15.10.2019 by learned XXVIII Assistant City Civil Court, Chennai. The petitioner/defendant has filed petition under Order IX Rule 13 of C.P.C. for setting aside the ex parte decree dated 15.10.2019 along with I.A.No.1 of 2021 seeking to condone the delay of 122 days in filing the set aside petition under Section 5 of the Limitation Act.

5. I.A.No.1 of 2021 was allowed on 14/3/2023 with a condition to deposit Rs.10 lakhs to the credit of O.S.No.5719 of 2019 on the file of the City Civil Court, Chennai, within a period of four weeks from the date of the said order. Aggrieved by the same, this Civil Revision Petition is filed.

6. Heard Mr.R.Thiagarajan, learned counsel for the petitioner and Mr.K.V.Babu, learned counsel for the respondent.



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7. It is submitted by the learned counsel for the petitioner/defendant that he is not aware of the fact that C.S.No.550 of 2018 was renumbered as O.S.No.5719 of 2019 and that was made over to VI Additional Judge, City Civil Court, Chennai, and that he has not received any intimation or notice and that the case is posted on a particular day and behind his back ex parte decree has been passed. It is also submitted that since he was not aware of date of listing, the trial Court should not have imposed a condition of depositing Rs.10 Lakhs while allowing I.A.No.1 of 2021.

8. Learned counsel appearing for the respondents/plaintiffs on the other hand strongly opposed the contentions raised by the learned counsel for the petitioner and submitted that it is the matter of practice that whenever the cases are transferred from this Court to the Civil Court, parties are in the habit of watching the Civil Court and that Civil Court also will notify in the notice boards about the listing of the case in various dates. It is further submitted that the condition imposed by the learned Judge is not onerous as direction is only to deposit in the Court that too in the credit of suit thereby sought for dismissal of this Civil Revision Petition.

9. Heard both sides and perused the record.



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10. Section 5 of the Limitation Act, 1961, runs as under:-

"5. Extension of prescribed period in certain cases Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

Considering the above, Section 5 of the Limitation Act does not provide for deposit or payment of the said amount as a condition to condone the delay.

11. In the case on hand, while allowing LA.No.1 of 2021 filed for condoning the delay in setting aside the ex parte decree, an amount of Rs. 10 lakhs were ordered to be deposited to the credit of the suit. When such huge amount of Rs.10 lakhs are directed to be deposited by the petitioner defendant, the trial Court is expected to give reasons as to why Rs 10 lakhs were ordered to be deposited. Normally, in case if the Court comes to the conclusion that the petitioner/defendant was on erring side in not defending the suit on account of which if the suit is decreed ex parte, and at the time of considering the petition for condoning the delay to set aside the said ex parte decree, the Court can direct, in a given case, to pay costs. The respondent/decreed holder has filed



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C.S.No.550 of 2008 against the petitioner/defendant and on account of increase in the pecuniary jurisdiction of the District Court, C.S.No.550 of 2008 transferred to the file of City Civil Court, Chennai and renumbered as O.S.No.5719 of 2019.

12. Learned counsel appearing for the respondent/plaintiff has submitted that there is a practice in this Court that whenever cases have been transferred to City Civil Court from the High Court, the parties and the concerned advocate will follow them up and note down the new number and also appear on the dates on which the parties are required to appear before the District Court. If really that is the practice and if the notices are not being served on the parties, then the submissions of the respondent/plaintiff can be considered to some extent. But in the case on hand, there is no material to hold that the petitioner/defendant is aware of the fact that C.S.No.550 of 2018 is renumbered as O.S.No.5719 of 2019 and was listed on a particular day.

13. On the contrary, learned Judge of concerned Court has issued notices to the petitioner/defendant informing that the case is listed on a particular day but admittedly, the notice that was taken in favour of the petitioner/defendant was not served and returned with an endorsement "Left". Once the notice has not been served, it is expected that the learned District Judge shall order to issue



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fresh notice to the petitioner/defendant or in case if at the instance of the respondent/plaintiff shall order for substituted service. But in the case on hand, learned Judge has treated the return endorsement "Left" as a proper service and thereby the suit was decreed ex parte.

14. On considering the above, it is clear that the petitioner/defendant was not negligent and has not at all responsible for not attending the Court. Therefore, once negligence cannot be attributed on the part of the petitioner, the trial Court should have simply allowed I.A.No.1 of 2021 and condoned the delay. However, the trial Court while allowing LA.No. 1 of 2021 directed the petitioner to deposit Rs 10 lakhs.

15. Learned counsel for the defendants has submitted that the direction is given by the Court is to deposit Rs.10 lakhs in the suit account only and not to the respondent/decreed holder thereby no prejudice is caused even if Rs.10 lakhs is deposited. It is true that the money is ordered to be deposited only to the suit account, however, when the petitioner is not at fault no matter whether it is Rs. 10 lakhs or Rupees One Hundred, the Court should not have passed such orders. Therefore whether depositing of Rs.10 lakhs becomes onerous to the petitioner or not is not the question here, since the petitioner has not committed any fault the trial Court should have allowed LA.No.1 of 2021 unconditionally.



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16. In view of the above, the order dated 14.03.2023 suffers from irregularity and therefore, this Civil Revision Petition is allowed setting aside the order dated 14.03.2023 of VI Additional Judge, City Civil Court, Chennai in L.A.No.1 of 2021 in O.S.No.5719 of 2019 insofar as directing to deposit Rs.10 lakhs alone rest of the orders stand good. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

mvs



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Dr.D.NAGARJUN,J

mvs./pkn.

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