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CRP.No.1852 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.03.2023

Delivered On: 28.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.1852 of 2021

and

CMP.No.14439 of 2021

C.Devaraj

... Petitioner/Respondent/Plaintiff

Vs.

MUTHOOT FINCORP Limited,
Having its Registered Office
At Muthoot Center,
Punnen Road, Trivandrum,
Kerala, Rep. By the Branch
Manager/Authorized Signatory,
Coonoor, The Nilgiris.

... Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order passed by the learned Sub Judge at Coonoor in I.A.No.90 of 2020 in O.S.No.190 of 2018 dated 22.04.2021.

For Petitioner : Mr.M.Rajasekar

For Respondent : Mr.P.Rajkumar



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order passed by the learned Sub Judge, Coonoor in I.A.No.90 of 2020 in O.S.No.190 of 2018 dated 22.04.2021.

2.The brief facts which are necessary to decide this Civil Revision Petition are as follows:-

2.1.The Revision Petitioner is the Plaintiff in O.S.No.190 of 2018 on the file of the learned Sub Judge, Coonoor, Nilgiris District. The Plaintiff had filed the suit in O.S.No.190 of 2018 seeking the Defendant to pay a sum of Rs.1,29,084/- along with 12 % interest per annum from the date of Suit till the date of realization. The Defendant Muthoot Fincorp Limited is a Company registered under the Companies Act and also a non-banking financial institution registered with the Reserve Bank of India. The Defendant Muthoot Fincorp Limited had entered into a lease agreement with the Plaintiff and was inducted as tenant in the premises belonging to the Plaintiff for a monthly rent of Rs.17,000/- (Rupees Seventeen Thousand only) based on the lease agreement dated 05.07.2013 for a period of 10 years commencing from 05.07.2013. The



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Defendant requested for an early termination of lease, as he wanted to relocate to some other premises identified by the Defendant Company. Accordingly, the tenancy was terminated from 31.07.2017. The Defendant delivered vacant possession of the premises. The Plaintiff had registered for payment of Service Tax as contemplated under the provisions of law with the Central Excise Department which came into effect from 01.04.2013. Therefore, the Plaintiff had to pay Service Tax at the applicable rate. The rent to the Plaintiff accrued on and after 01.04.2013. This was informed duly to his tenant which included Public Sector Banks. The same was informed to the Defendant also. The Defendant agreed that he is liable to pay the same. Contrary to the assurance given by the Defendants both orally and writing, a sum of Rs.1,14,115/- was paid by the Plaintiff towards service tax on the rent paid by the Defendant. On the date of vacating the premises, the Defendant's Officials informed the Plaintiff that the payment of his outstanding sum would be made without any delay. Even after more than 12 months, the Defendant did not pay. Therefore, several letters were addressed to the Defendant. There was no response from the Defendant. Therefore, the Suit was filed for recovery of money. The Defendant



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appeared on summons and engaged a Counsel. He did not contest the case and left it for *ex parte*. The Plaintiff had examined himself as P.W-1 and based on the documents, the Plaintiff was granted the *ex parte* decree. Subsequently, the Defendant filed a Petition to condone the delay in filing the Petition to set aside the *ex parte* decree. The learned Counsel for the Revision Petitioner/Plaintiff invited the attention of this Court to the case status of the Court of the learned Sub Judge, Coonoor from 14.11.2018 to 26.07.2019. The case was posted for written statement. After 90 days from the date of service of summons, since written statement was not filed and there is no representation, the Defendant was set *ex parte* on 10.06.2019. The *ex parte* evidence of Plaintiff was recorded on 25.06.2019. On 11.07.2019, the Plaintiff examined the Witnesses and marked the documents viz., A1 to A9. The Plaintiff side evidence was closed and posted for arguments on 19.07.2019. On 19.07.2019, arguments heard and adjourned to 26.07.2019 for judgment. The suit was decreed with costs in favour of the Plaintiff on 26.07.2019. Subsequently, the Defendant in the suit filed I.A.No.90 of 2020 in O.S.No.190 of 2018 seeking to set aside the *ex parte* decree against the Defendant and the same was resisted by the



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Plaintiff as Respondent. After due enquiry, the learned Sub Judge, Coonoor by order dated 22.04.2021 allowed the I.A.No.90 of 2020 in O.S.No.190 of 2018. Aggrieved by the same, the Plaintiff in O.S.No.190 of 2018 had approached this Court by filing this Civil Revision Petition under Section 115 of Civil Procedure Code.

3. The learned Counsel for the Petitioner invited the attention of this Court to the *ex parte* decree in favour of the Revision Petitioner passed by the learned Sub Judge, Coonoor as per order dated 26.07.2019 which is extracted hereunder:

“I. The Suit is decreed with cost.

II. Both Defendants jointly and severally shall pay a sum of Rs.1,29,084.00 to the Plaintiff with interest at the rate of 9% per annum from the date of Suit till the date of decree and subsequent interest at the rate of 6% per annum from the date of decree till the date of realization, with in two months from the date of decree.”

4. The learned Counsel for the Revision Petitioner invited the attention of this Court to the contents of the affidavit filed by the Defendant in the Suit as Petitioner in I.A.No.90 of 2020. The relevant portion is extracted hereunder:



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“2. I, hereby state that the above case was decreed ex parte on the 26th day of July 2019 as the Defendant did not file the Written Statement in the Suit. The then Manager of the Petitioner/Defendant Company of the local branch Mr.Selvakumar did not inform the developments and hearing dates of the above case to the Main Office at Trivandrum in time and the Manager had resigned the job and left the Company, the Written statement could not be filed before this Hon'ble Court on the said date 29.04.2019, due to mis-communication, the Counsel on record also did not inform the same to the Company at any point of time, hence the Petitioner/Defendant was called absent, set ex parte and an Order of ex parte Decree was passed against us on 26.07.2019.

3. I hereby further state that I have come to know about the aforesaid case and its decree passed against the Company only after receipt of the Execution Notice in the Head Office at Kerala very recently and thereafter got the required documents and immediately I have approached a Counsel and presented this Petition to set aside the ex parte decree passed against the Company.

4. I hereby declare that not filing the written statement before this Hon'ble Court on the said date was neither willful nor deliberate it was only due to mis-communication of the postings of the case by the then Manager and the Counsel on record. I hereby declare that I was advised that I have got very good case for defense in the above case.”

5. It is the contention of the learned Counsel for the Defendant before the trial Court that there was a communication gap between the earlier Counsel and the Branch Manager of the Company. The Company Headquarters is at Trivandrum. The Branch Manager of the Company, Coonoor resigned his job and left the Company. Therefore, he filed Petition for change of Counsel.



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6. It is the contention of the learned Counsel for the Revision Petitioner/Plaintiff before the trial Court that what had been stated in the affidavit was false, they had received a certified copy of the judgment and had filed a Petition to condone the delay as though they were aware of the *ex parte* decree only after notice in E.P, which is nothing but falsehood. The Defendant in the Suit is a Financial Corporation as per Reserve Bank of India license and it is under the control of SEBI and RBI which cannot make such false allegation as an ordinary villager. Therefore, false affidavit filed by the Defendant in I.A.No.90 of 2020 in O.S.No.190 of 2018, the Petition ought to have been dismissed instead the Petition was allowed. Aggrieved by the same, the Plaintiff approached this Court to set aside the Order of allowing the I.A.No.90 of 2020 to condone the delay for complete adjudication of the dispute.

7. The learned Counsel for the Revision Petitioner invited the attention of this Court to the contents of the counter filed by the Plaintiff as Respondent in I.A.No.90 of 2020. The relevant portion is extracted hereunder.

“5. Be that as it may, what ought to completely expose the



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falsity of all the reasons put forth in the affidavit filed in support of the application, including that of the Counsel on record not having informed the Company of the status of the case and the Petitioner having come to know of the ex parte decree only on receipt of notice in the Execution Petition, is the fact that after the passing of the ex parte decree, the Petitioner entered appearance through a second Counsel Mr.B.Sugumaran on 19th October 2019, who had filed vakalath along with a copy application (CA No.608/2019), seeking the issue of copies of the judgment and decree passed in the Suit. Copies of the judgment and decree have been obtained by the Petitioner's Counsel on 30th October 2019. If in fact that Company was unaware of them having been set ex parte for not filing written statement, they could not have instructed the second Counsel to enter appearance in order to obtain copies of the judgment and decree. The story therefore of having come to know of the ex parte decree only on receipt of the notice in the Execution Petition is blatantly false, which is testified as being false by records available in Court, despite which the Petitioner has proceeded to weave a fairytale, which is something not expected of a Non-Banking Financial Institution, the functioning of which is regulated by the SEBI and Reserve Bank of India.”

8. Instead, the learned Judge had ignored the vehement objection of the learned Counsel for the Revision Petitioner, who is the Respondent in I.A.No.90 of 2020 and allowed the Petition. Aggrieved by the same, the Plaintiff in O.S.No.190 of 2018 had preferred this Civil Revision Petition.

9. He invited the attention of this Court to the Order passed by the



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learned Sub Judge, Coonoor in I.A.No.90 of 2020 in O.S.No.190 of 2018 dated 22.04.2021. The relevant portion is extracted hereunder:

“At the same time, the learned Advocate appearing for the Respondent would submit that, on behalf of the Petitioner an Advocate namely Mr.B.Sugumaran, had filed a copy application on 19.10.2019, seeking the copies of Judgment and Decree passed in the Suit. So, it is false to state that the Petitioner has knowledge about the decree only after receipt of the notice in E.P. Proceedings. This Court paid anxious consideration for the respective case of the parties. In this case, it is the argument submitted by the learned Advocate for the Petitioner that, the previous Manager failed to inform the development of case, even the ex parte decree and subsequent copy application filed through another Advocate. Considering the above stated reason and number of days delay, this Court is of the view that the Petitioner has sufficient cause for not filing the Petition to set aside the ex parte decree within the statutory period. Further, the Hon'ble Supreme Court in suo motu Writ Petition (Civil) No.3/2020 excluded the period from 15.03.2020 till 14.03.2021 in computing period of limitation. In this case, Petitioner has filed this Petition on 21.08.2020. the period from 15.03.2020 till 20.08.2021 has to be excluded for calculating limitation. Considering the said fact, this Court is of the view that the delay in number of days for filing the Petition to set aside ex parte decree would be less i.e., 234 days (392-158).”

10. It is the contention of the learned Counsel for the Petitioner that the subject matter of the Petition is prior to the Covid lockdown. The learned Judge has considered it as Covid lockdown and granted it based on *suo motu* Writ Petition of the Hon'ble Supreme Court giving direction



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to all the Courts of the Country to consider the Petition leniently for the Covid period.

11. Even though, the submission of the learned Counsel for the Revision Petitioner is found acceptable to the facts, that there had not been any communication gap between the earlier Counsel and the Branch Manager of the Company, Coonoor. The order of the learned Sub Judge is justified by the contents of the affidavit wherein it is stated that Mr.Selvakumar, Branch Manager resigned his job. The earlier Counsel did not inform the Headquarters regarding the dates and the Defendant being set *ex parte*. After change of Counsel, they have received a copy of the judgment. It is true that there had been two dates mentioned in the affidavit of the Defendant. Therefore, the claim by the Defendant that they were aware of *ex parte* decree only after receipt of notice of Execution Petition cannot at all be accepted. For that simple reason, if the Petition to condone the delay is dismissed, it will result in miscarriage of justice. It is for the interest of the Defendant as well as the Plaintiff to get a considered judgment. Therefore, this Petition cannot be dismissed on mere technicalities of law, as raised by the Revision



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Petitioner herein, who is the Plaintiff in the suit and Respondent in the Petition to condone the delay in filing petition to set aside the *ex parte* decree.

12. In support of his contention, learned Counsel for the Petitioner relied on the ruling reported in **2019 (3) CTC 81** in the ***Kirubasanam Kiruothuvin Saba, Rep. By its President, Dasayya Vs. T.Ramanathan and others.*** The relevant portion is extracted hereunder:

“20. As far as the other ground of condoning of delay of 536 days, it is pleaded in the Affidavit that though the Defendant has entrusted the Suit to one Advocate Shree Sony. Since he has not communicated that the Suit was posted on 30.07.2008, they were set ex parte. Further it is contended that summons have been served in the wrong address of the Second Defendant. It is to be noted that only the second Defendant who filed the Affidavit, wherein para 4 it is categorically stated that he engaged Advocate, since his Advocate did not communicate properly, they were set ex parte. Therefore, his contention in Para 5 of the Affidavit that summons have been sent to the wrong address cannot be countenanced and it is contrary to the averment in Para 4 of the affidavit. It is further to be noted that absolutely, there is no pleadings and reasons in his Affidavit for such huge delay of 536 days in the entire Affidavit.”

13. In the light of the reported ruling, the submission of the learned Counsel for the Petitioner cannot at all be accepted in the facts and



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circumstances of this case. In this case, the Headquarters of the Defendant's Company is at Trivandrum. As per the plaint averments, the parties in the Suit, the Branch Manager of the Company was the party before the trial Court. He left his service. The learned Counsel appearing for the Defendant also did not inform the same. Therefore, after coming to know about the *ex parte* decree, the change of Counsel by the Company shows the involvement of the Company to prosecute the case. Therefore, the duty to watch the proceedings as per the reported ruling is not applicable to the facts of this case. The Company is interested in engaging a reliable Counsel and the change of Counsel who had perused the records and had properly filed petition to condone the delay in filing the petition to set aside the *ex parte* decree. Therefore, the finding of the learned Sub Judge allowing the Petition with cost is justified and it does not warrant any interference under Section 115 of Civil Procedure Code.

14. Point for consideration is answered in favour of the Respondent and against the Petitioner. The Order passed by the learned Sub Judge, Coonoor in I.A.No.90 of 2020 in O.S.No.190 of 2018 dated 22.04.2021 is to be confirmed.



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In the result, this ***Civil Revision Petition is dismissed.*** The Order passed by the learned Sub Judge, Coonoor in I.A.No.90 of 2020 in O.S.No.190 of 2018 dated 22.04.2021 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned Sub Judge,
Coonoor.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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