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CRP.No. 80 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : .03.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 80 of 2021

and

CMP.No. 631 of 2021

Jayanthi

... Petitioner

Versus

K. Manickavasagam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 24.06.2020 passed in I.A.No. 54 of 2019 in O.S.No. 218 of 2016 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram.

For petitioner : Mr.S.Mohammed Azarudeen Sharaf

For Respondent : Mr.Ramesh Kumar

ORDER

The respondent herein has filed the suit for recovery of a total sum of Rs.26,36,750/-, representing the principal sum of Rs.13,25,000/- together



CRP.No. 80 of 2021

with interest from 25.03.2008 to 25.06.2016 at Rs.13,11,750/- and for future costs.

2. According to the respondent/plaintiff, the revision petitioner/defendant has approached him for financial assistance. In order to secure prompt repayment of the loan amount, the defendant had executed the suit mortgage deed dated 25.07.2008 registered as Document No. 887 of 2008 on the file of Sub Registrar, Udumalpet Taluk. As per the registered mortgage deed, the defendant has agreed to pay a sum of Rs.1/- per Rs.100/- per month as interest for the loan amount of R.13,25,000/- received by her. However, from the date of executing the mortgage deed, the defendant has failed to pay even as a single rupee towards interest. Therefore, on 25.06.2016, the plaintiff sent a legal notice calling upon the defendant to pay the mortgage loan amount with interest. The notice dated 25.06.2016 was refused to be received by the defendant and it was returned. Thereafter, the suit was filed for recovery of the amount based on the registered mortgage deed.



CRP.No. 80 of 2021

also reasoned that the delay has not been properly explained by the revision petitioner/defendant. The revision petitioner has not given justifiable reasons for condoning the huge delay of 696 days and accordingly, dismissed the application.

5. The learned counsel for the revision petitioner-defendnat has placed reliance on several decisions of this Court and the Hon'ble Supreme Court and contended that the Court below has refused to offer one more opportunity to defend the suit without any justifiable reason. According to the learned counsel for the petitioner, the revision petitioner-defendant was admitted as an inpatient even as early as on 27.03.2009 for her "Large acute Haemorrhage in Right Temporo Parietal Region and Right Caudate Nucleus with Intraventricular Extension and Right Sphenoidal Sinusitis". It is stated that on 28.08.2013 she underwent the surgery. Subsequently, from 15.07.2019 to 21.01.2020 she had taken treatment in Medical College Hospital at Trivandrum, Kerala. According to the learned counsel, the ailment suffered by the revision petitioner had reasonably prevented her from defending the suit. The delay has occurred beyond the control of the revision petitioner. While deciding an application for setting aside the ex-parte decree



CRP.No. 80 of 2021

to condone the delay, the Court cannot be adopt a *straight jacket formula* and has to adopt a liberal approach theory to sub-serve the interest of justice.

The Courts have to weigh the reasons for non-appearance of the party and the bonafides while considering an application for delay. The Court should not resort to show the exit doors to a litigant who could not exercise reasonable diligence in defending the suit filed against him. In effect, it is contended that the trial court ought to have considered the reasons adduced by the defendant in the proper prospective to examine as to what reasonably prevented her from defending the suit. In the present case, the defendant has produced medical records to show her ailment. It is true that the defendant was earlier set aside the ex-parte decree but that should not weigh the mind of the Court to refuse to condone the delay. Therefore, the learned counsel for the revision petitioner prayed for allowing the Civil Revision Petition.

6. On the other hand, the learned counsel for the respondent/plaintiff submitted that the suit was filed for recovery of money based on a registered mortgage deed. Upon executing the mortgage deed, the revision petitioner-defendant received a sum of Rs.13,25,000/- in the year 2013. There is nothing on record to show that the revision petitioner had



CRP.No. 80 of 2021

paid any amount towards discharge of the mortgage loan. Even the pre-suit notice sent by the plaintiff has been refused to be received. The plaintiff who executed the registered mortgage deed is fully aware of her obligation to repay the loan amount. However, she has adopted a dilatory tactics to defy the plaintiff from recovering the lawful money lend to her. The trial Court in the order which is impugned herein, has categorically held that already an opportunity was given to the revision petitioner by setting aside the ex-parte decree passed against her and in spite of the same, she has not filed the written statement. Further the plaintiff has not produced any document to show that she was either hospitalized or taken any treatment during the period from the date on which she was set ex-parte in the year 2017 till the date of filing the present application. The medical records produced by the plaintiff relates to the period of treatment taken by her from 2019 to 2020. There is nothing on record to show that she was taking treatment between 2017 to 2019. Pointing out the above and also the length of delay, the trial Court has rightly refused to condone the delay and dismissed the application. The learned counsel for the respondent, therefore, prays for dismissal of the Civil Revision Petition.

7. Heard both sides and perused the materials available on record.



CRP.No. 80 of 2021

WEB COPY

8. Admittedly, soon after the institution of the suit in the year 2013, for recovery of money based on a registered mortgage deed in the year 2008, notice was served to the defendant but she has refused to receive it. Therefore, paper publication was effected and thereafter, she was set ex-parte. To execute the Exparte decree, the respondent-plaintiff has filed an Execution Petition. At this stage, to set aside the exparte decree, the defendant filed an application to set aside the exparte decree. The trial Court has shown indulgence and allowed the application and inspite of the same and having engaged an Advocate to defend the suit, the revision petitioner did not take any steps to file the written statement.

9. It is needless to mention that the suit mortgage deed was executed in the year 2008 and it was a registered mortgage deed. The suit was filed in the year 2013 after sending a pre-suit notice. In the suit, the defendant was set ex-parte but subsequently, it was set aside and the suit was restored. Once again the defendant was set exparte and a preliminary decree was passed in the suit. When the plaintiff filed Execution Petition to execute the preliminary decree the instant application was filed to condone the delay



CRP.No. 80 of 2021

of 696 days.

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10. The reason assigned in the present application is that the revision petitioner suffered some ailment and was taking treatment at a hospital in Trivandrum, Kerala. To substantiate the same, medical records have been produced before this Court. As rightly pointed out by the learned counsel for the respondent/plaintiff the medical records pertain to the period of treatment taken from 2019 to 2020. There is nothing on record to show that the revision petitioner took treatment from 2017 when she was set ex-parte till the date of filing the instant application in the year 2019. Thus, the reasons assigned by the revision petitioner for condonation of delay, in the opinion of this Court, are not *bonafide*. The revision petitioner having engaged a counsel has not chosen to file the written statement at least from 2013 to 2017. This is a case where the revision petitioner had failed to take diligent steps inspite of several opportunities granted to her. The revision petitioner-defendant remained slackness throughout the suit proceedings and this Court is not convinced with the reasons assigned by her for condoning the delay in filing the application. In a case of this nature, while the revision petitioner pleaded for granting one more opportunity, this Court is also



CRP.No. 80 of 2021

obliged to weigh the prejudice that would have been caused to the respondent/plaintiff who has instituted the suit for recovery of money based on a registered mortgage deed. In the plaint filed in the year 2013, the plaintiff has pleaded that the defendant has not paid a single rupee towards interest from the date of the mortgage in the year 2008. Having regard to all the above, this Court is of the view the trial Court is wholly justified in refusing to condone the delay of 696 days in filing the application to set aside the exparte preliminary decree. Hence, this Court does not find any reasons to interfere with the order passed by the trial Court.

11. Accordingly, the fair and decretal order dated 24.06.2020 passed in I.A.No. 54 of 2019 in O.S.No. 218 of 2016 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram is confirmed. The Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

.03.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

MSM

To

1. The III Additional District and



CRP.No. 80 of 2021

Sessions Judge, Tiruppur at Dharapuram.

2. The Section Officer, High Court, Madras.

V.BHAVANI SUBBAROYAN, J.



WEB COPY



CRP.No. 80 of 2021

msm

CRP.No. 80 of 2021

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Pre-Delivery Order
in
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CRP.No. 80 of 2021

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Most Respectfully Submitted
by MSM