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C.R.P.No.2648 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.06.2023

Delivered On : 01.12.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 2648 of 2021

and

C.M.P.No.19579 of 2021

Dr. S. Gunasekaran

.. Petitioner

Versus

K.Raju

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 20.09.2021 passed in I.A. No. 2 of 2019 in O.S. No. 298 of 2018 on the file of Additional District Judge, Kancheepuram District at Chengalpattu.

For Petitioner : Mr. C.P. Sivamohan

For Respondent : Mr. N. Umapathi

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 20.09.2021 passed in I.A. No. 2 of 2019 in O.S. No. 298 of 2018 by the learned Additional District Judge, Kancheepuram District at Chengalpattu, thereby dismissing the application to set aside the exparte



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decree passed in the suit.

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2. The Petitioner is the Defendant in O.S. No. 298 of 2018. The Respondent is the Plaintiff. The suit in O.S. No. 298 of 2019 was instituted before the learned Additional District Judge, Kancheepuram District at Chengalpattu by the Respondent, as Plaintiff, for recovery of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the Petitioner/Defendant. The dispute arose out of a contract for joint venture entered into with the Respondent by the Petitioner dated 11.12.2012.

3. After the suit was instituted, summons were served on the Petitioner. The Petitioner/Defendant engaged a counsel but did not file written statement. It is stated that the Counsel engaged by the Petitioner-Defendant informed him that the subject matter of the dispute can be settled amicably. Believing the words of the Counsel, the Petitioner was expecting for the outcome of the suit. But to his shock and surprise, he came to know that he was set *ex parte* in the suit by the clever trick played by his Counsel and the Counsel for the Plaintiff. Immediately, he filed the Petition to set aside the *ex parte* order passed against him by changing his Counsel. The new Counsel had filed the Petition to set aside the *ex parte* order under Order IX, Rule 7 of CPC in I.A. No. 2 of 2019



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in O.S. No. 298 of 2018. The Plaintiff/Respondent also objected to the Petition under Order IX, Rule 7 of CPC. After due enquiry, the learned Additional District Judge, Kancheepuram at Chengalpattu, dismissed the petition filed by the Petitioner under Order IX, Rule 7 of CPC. Aggrieved by the same, the Petitioner had approached this Court by filing this Civil Revision Petition under Article 227 of the Constitution of India.

4. Mr. C.P. Sivamohan, learned Counsel appearing for the Petitioner submitted that the suit was filed for recovery of money based on a contract for joint venture agreement. There was dispute between the Plaintiff and the Defendant regarding the contract. After filing of the suit for recovery of money, the Petitioner received summons, he had engaged Counsel, but did not file the written statement under the impression that the dispute will be settled amicably as has been represented to him by his counsel. Therefore, he was expecting that the suit instituted by the Respondent/Plaintiff will end in compromise. Unfortunately, the Counsel engaged by the Petitioner by informing the Petitioner that the matter will be compromised had left it *ex parte* thereby the Plaintiff Counsel before the Court by name Mr. Sathish Kumar had obtained an *ex parte* decree by misrepresentation and the Defendant was set *ex parte*. When the Petitioner came to know about the *ex*



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parte order passed against him, he had, within two months from the date of the *ex parte* decree, filed the Petition in I.A. No. 2 of 2019 after coming to know that he was misguided and cheated by his Counsel. Therefore, he engaged a different Counsel and filed Petition in I.A. No. 2 of 2019 in O.S. No. 298 of 2018 seeking to set aside the *ex parte* order. To show his *bona fide*, he has also filed written statement along with Petition in I.A.No.2 of 2019 seeking to set aside the *ex parte* order.

5. The learned Counsel for the Plaintiff vehemently objected to the filing of the Petition by filing counter in I.A.No.2 of 2019 in O.S. No.298 of 2018. After due enquiry, the learned Additional District Judge, Kancheepuram at Chengalpattu by order dated 20.09.2021 dismissed the I.A.No.2 of 2019 in O.S.No.298 of 2018 by observing as follows:

“6. ... Therefore, the main allegation of the Petitioner is the cheating of one Advocate by name Mr.Sathish. The very same Sathish. The very same Sathish filed the suit, and after filing of this petition one learned Advocate by name Thiru.D.Sekar filed change of Vakalath for the respondent/plaintiff.

To set aside the ex parte order dated 12.07.2019 the Petitioner filed this petition on 5.9.2019. As rightly contended by the learned Counsel for the Petitioner/Defendant no limitation will run in the pending suit.

7.The only question to be decided in this petition is whether



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the Petitioner/Defendant proved the alleged cheating of learned Advocate Sathish. No iota of oral or documentary evidence is available on the side of the Petitioner/Defendant to prove that earlier counsel on record for the respondent/plaintiff cheated him and only on his advise he failed to give instructions to the counsel on records for him.

8. Perusal of Suit Notes Paper reveals that on 21.1.2019 the counsel on record Thiru.Tamil Selvakumar undertake to file Vakalath for the Defendant and in spite of adjournments given on 22.02.2019, 29.04.2019, 12.6.2019 and 12.7.2019 no written statement filed on behalf of the Petitioner/Defendant and counsel on record also failed to appear on 12.7.2019.

9. As per amended Civil Procedure Code from the date of service the Petitioner has to file written statement within 90 days. Even after 6 months the Petitioner/Defendant failed to file written statement and except the alleged cheating no other ground was mentioned in this petition.

If the petition is allowed as such, it means that this court has accepted that learned Advocate Mr.Sathish cheated this Petitioner/Defendant. Having raised such a serious allegation in the petition against the other side Advocate, the Petitioner/Defendant ought to have proved the same by acceptable oral and documentary evidence. In the absence of any evidence as aforesaid this court is of the considered opinion that allegation levelled in the petition against the Advocate and the reasons for the non filing of Written statement stated in the petition is not accepted and the petition filed by the Petitioner/Defendant deserves to be dismissed.

10.In the result, this petition is dismissed. No costs.”



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6. It is the contention of the learned Counsel for the Petitioner that even though his earlier Counsel cheated him, he did not file any complaint against the Counsel before the Bar Council. The learned Additional District Judge, Kancheepuram at Chengalpattu, had dismissed the Petition in I.A.No.2 of 2019 in O.S.No.298 of 2018 stating that the Petitioner had not furnished proof regarding the contention made in the affidavit of the Petitioner that his earlier Counsel cheated him.

7. It is the submission of the learned Counsel for the Petitioner that invariably Petition under Order IX, Rule 7 of CPC will be allowed magnanimously and leniently by the trial Judge. Here is the case where the learned Additional District Judge, Kancheepuram at Chengalpattu found an unusual way of dismissing the Petition by stating that the Defendant in the suit in O.S. No. 298 of 2018, having filed the Petition in I.A. No. 2 of 2019 blamed his Counsel and the counsel engaged by the plaintiff that the subject matter of the dispute will be resolved amicably, thereby he was victimised. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the order of dismissal passed by the first Additional District Judge, Kancheepuram at Chengalpattu in I.A.No.2 of 2019 in O.S.No.298 of 2018. It is the further

<https://www.mhc.trisubmission of the learned Counsel for the Revision Petitioner that to show>



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bona fides, the Petitioner had filed a written statement along with the Petition under Order IX, Rule 7 of CPC. Also, he would submit that Petition under Order IX, Rule 7 of CPC can be filed any time when the proceedings are pending before the Court. Here, it was not an *ex parte* decree. Before granting decree, before proceeding with the recording of evidence of the Plaintiff, the Petitioner, as Defendant, had filed the Petition under Order IX, Rule 7 of CPC. He had given out *bona fide* reasons since the earlier Counsel did not file written statement within the specified time on the ground that the matter is likely to be settled. Therefore, the observation of the learned Additional District Judge, Kancheepuram at Chengalpattu is found to be unusual. Therefore, he seeks to set aside the order.

8. The learned Counsel appearing for the Respondent vehemently objected to allow this Civil Revision Petition stating that the Petitioner is liable to pay Rs.20,00,000/-. The Petitioner was aware of his liability. Since he did not have any valid defence, he remained *ex parte* only to protract the proceedings and blaming his own counsel as also the counsel appeared for the plaintiff before the trial court. If really his counsel has stated that the matter will be settled, it cannot be settled without his participation and negotiation. The allegation that his erstwhile counsel has merely stated that the matter



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would be settled is an illusion and it was invented to protract the proceedings.

WEB C The Petitioner has not come forward with this Civil Revision Petition with bona fides. The petition lacks merits and therefore, the Revision is liable to be dismissed. However, if this Honourable Court comes to the conclusion that the Revision petition can be allowed, by restoring the suit, the Revision Petitioner may be directed to deposit part of the suit claim before the trial Court so that the Petitioner will not indulge in similar acts in the course of the trial.

9. The learned Counsel appearing for the Revision Petitioner vehemently objected to the line of arguments of the learned Counsel appearing for the Respondent by stating that this Revision is filed to set aside the *ex parte* decree. The liability for the Petitioner cannot be fixed before recording evidence in the suit. This is a Petition under Order IX, Rule 7 of CPC which was filed by the Petitioner on coming to know that he was set *ex parte* and before the suit could be disposed of by the learned Additional District Judge, Kancheepuram at Chengalpattu, the petition was filed. Also, the learned Counsel appearing for the Revision Petitioner submitted that only due to vehement objection of the learned Counsel appearing for the Respondent, the learned Additional District Judge, Kancheepuram at Chengalpattu, had dismissed the Petition. If the learned Counsel appearing for the Plaintiff had



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been lenient and magnanimous, the suit itself might have been disposed of by this time as the suit is of the year 2018.

10. Point for consideration:

Whether the order passed by the learned Additional District Judge, Kancheepuram at Chengalpattu in I.A.No.2 of 2019 in O.S.No.298 of 2018, dated 20.09.2021, is to be set aside as perverse?

11. Heard the learned Counsel for the Revision Petitioner, learned Counsel for the Respondent and perused the records.

12. The submissions made by the Revision Petitioner in the instant petition to set aside the *ex parte* decree are not convincing. If the Petitioner feels that he was cheated by his erstwhile Counsel, he ought to have filed complaint before the Bar Council against his Counsel for unethical practices. When the Petitioner files affidavit mentioning that his Counsel cheated him, then the Court expects the Petitioner to file proof of the complaint given before the Bar Council. The observations made by the learned trial Judge to that effect cannot be faulted. However, this Court is of the view that an opportunity can be given to the Petitioner to contest the suit without any further delay.



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This is more so that the Revision Petitioner/Defendant said to have filed his written statement in the suit. Anyhow, considering the nature of the petition being the one under Order IX, Rule 7 of CPC and not a petition filed under Order IX, Rule 13 of CPC, the submission of the learned Counsel for the Petitioner objecting to the submission of the learned Counsel for the Respondent seeking to direct the Petitioner to deposit a part of the suit claim is found unwarranted for the present. At the same time, this Court is of the view that the Petitioner cannot be left without imposing any costs.

13. In the light of the above discussion, in the interest of justice and in the interest of complete adjudication of the dispute, the point for consideration is answered in favour of the Revision Petition and against the Respondent. The order passed by the learned Additional District Judge, Kancheepuram at Chengalpattu in I.A.No.2 of 2019 in O.S.No.298 of 2018 is to be set aside by imposing cost of Rs.10,000/- (Rupees Ten Thousand Only) on the Petitioner to be deposited in Court.

In the result, this **Civil Revision Petition is allowed.** The Revision Petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) towards costs to the Respondent which has to be deposited into the Court by



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the Petitioner to the credit of the suit within one month from the date of receipt of a copy of this order, failing which, the learned Additional District Judge, Kancheepuram at Chengalpattu, shall pass appropriate orders. On such deposit being made, the learned Additional District Judge, Kancheepuram at Chengalpattu shall permit the Respondent herein/Plaintiff in O.S.No.298 of 2018 to withdraw the amount. The learned Additional District Judge, Kancheepuram at Chengalpattu is also directed to proceed with the trial and dispose the suit within a reasonable period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

01.12.2023

SRM

Index : Yes / No

Internet : Yes / No

To

The Additional District Judge,
Kancheepuram at Chengalpattu.

SATHI KUMAR SUKUMARA KURUP., J.



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SRM

Order made in
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