



CRP.No. 3022 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 3022 of 2021
and
CMP.No. 21440 of 2021

M.A. Joseph

... Petitioner

Versus

1. S.T. Theresnathan
2. A.Pragasa Rayar

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prays to set aside the fair and decretal order dated 22.10.2021 made in I.A.No. 289 of 2021 in O.S.No. 14 of 2016 on the file of Principal Sub Judge, Puducherry.

For petitioner	: Mr.P. Chandrasekar
For R1	: Mr.S. Bhargavan
For R2	: No Appearance

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 22.10.2021 made in I.A.No. 289 of 2021 in O.S.No. 14 of 2016 on the file of Principal Sub Judge, Puducherry.



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2. The revision petitioner herein is the plaintiff and the respondents herein are the defendants 1 and 2 in the suit.

3. The learned counsel for the petitioner/plaintiff submitted that in spite of appearing through his Counsel, the first respondent/1st defendant did not conduct his case and hence, he was set ex-parte. He further submitted that the first respondent/1st defendant did not give any proper reasons for his non appearance before the Court below and vague allegations regarding illness and blaming advocate, and the same cannot be accepted. Thereafter, the petitioner/plaintiff has also filed Execution Petition before the executing Court and on receipt of notice in the execution petition, the 1st defendant come forward with the application to defeat the Execution Petition filed by the plaintiff. He further submitted that the 1st defendant has not come with clean hands and his intention is to delay the execution proceedings, and hence, the delay cannot be condoned. Hence, the revision petitioner prays to set aside the findings of the trial Court.

4. Per contra, the learned counsel for the first respondent/1st defendant submitted that in the above suit, the 1st respondent/1st



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defendant has also engaged a counsel, but due to old age and prolonged illness, the 1st defendant was unable to appear before the Court below, and hence, he was set ex-parte and an ex-parte decree was passed on 03.10.2017. He further submitted that due to old age of the 1st defendant nearing 70 years and residing in Aranthangi Village, Kattumannar Koil Taluk, Cuddalore District, and therefore, he was unable to appear before the Court below and hence, the delay may be condoned otherwise much hardship will be caused to the 1st defendant.

5. On a perusal of the records, it is seen that the petitioner/plaintiff filed a suit in O.S.No.14 of 2016 before the learned Principal Sub Judge, Puducherry, for recovery of money from the defendants jointly and severally to pay the amount of Rs.3,07,408/- with interest at the rate of 8% per annum from the date of plaint till realization and for costs. The 1st defendant himself has admitted that summon was duly served on him and he has also engaged an Advocate on his behalf to conduct the case, but the 1st defendant has stated that due to failure on the part of his advocate, an ex-parte decree was passed by the Court below. It is also seen that the Court below has failed to appreciate that the 1st respondent did not come out with clean hands and the 1st petitioner had engaged an advocate after



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receiving the summons from the Court and purposefully got ex-parte and after a period of 669 days had approached the trial Court when the execution petition was filed. The Court below had committed a grievous error in allowing the set aside the ex-parte decree petition when there was no material evidence produced on the side of the 1st respondent for enormous delay of 669 days. The Court below had also failed to appreciate the fact that after a period of three years, the 1st respondent having the follow up of the above said case and waited till the execution petition and approached this Court with enormous delay which will prove the attitude of the 1st respondent in dragging the proceedings in the above said matter. In spite of ordinary costs allowed in I.A.No. 882 of 2019 to condone the delay of 669 days in filing the petition to set aside the ex-parte decree and also the 1st respondent did not comply with the order and on the last day, he filed petition for extension of time and not obeyed the Court order. Therefore, the above Revision has to be allowed.

6. On a further perusal of the records, it is seen that the plaintiff has filed the present suit for recovery of money based on pro-note, the 1st defendant also entered appearance, but due to non filing of the written statement, he was set ex-parte. Subsequently, an ex-parte decree was



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7. Taking into the above facts and circumstances of the case and the suit is of the year 2016, the Trial Court is directed to dispose of the suit in O.S.No. 14 of 2016 on the file of Principal Sub Judge, Puducherry, after affording an opportunity to the parties concerned within a period of one year from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : yes/no
Speaking order : Yes/No
Neutral Citation : Yes/No
msm

To

1. The Principal Sub Judge, Puducherry.
2. The Section Officer, High Court of Madras.



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V.BHAVANI SUBBAROYAN, J.

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