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C.R.P. (NPD) No. 2284 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HON'BLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P. (NPD) No. 2284 of 2017

and

C.M.P. No. 10761 of 2017

R.Uma

...Petitioner

Vs.

S.Ramamurthy

...Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India praying to allow the above C.R.P. by setting aside the fair and decreetal order passed on E.A. No. 4217 of 2016 E.P. No. 1043 of 2016 in O.S. No. 5231 of 2010 on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. K.Venkateswaran

For Respondent : Not ready notice

ORDER

The petitioner suffered decree in O.S. No. 5231 of 2010. After contest, the leave to sue was dismissed and the suit was decreed on 19.11.2011.

2. In order to execute the decree, a petition was filed in E.P. No. 1043



C.R.P. (NPD) No. 2284 of 2017

of 2016. In the said EP, despite being served with the summons, the judgment debtor did not enter appearance and was set exparte on 16.09.2016. I

3. In order to set aside the exparte order, invoking Order XXI Rule 106 of Code of Civil Procedure, the civil revision petitioner filed E.A. No. 4217 of 2016. The learned Judge exercised his discretion in favour of the petitioner and directed him to deposit a sum of Rs.90,000/-, which is actually 1/6th of the decree amount. Challenging the same, the present civil revision petition has been presented.

4. Mr. K.Venkateswaran, learned counsel appearing for the petitioner would vehemently contend that the condition that has been imposed is excessive, onerous and untenable. He agrees that a condition can be imposed by a Court to set aside an exparte order, but the condition that has been imposed in the present case as stated above suffers from all of the above.

5. I have carefully applied my mind to the facts of the case that the



C.R.P. (NPD) No. 2284 of 2017

condition that has been imposed is not in a situation which has arisen prior to the passing of the decree. There is no dispute that the decree in O.S. No. 5231 of 2010 has become final. The decree passed has not been challenged before the higher forum either by way of an appeal or challenging the dismissal of leave to defend application. In other words, the entitlement of the decree holder to the said sum had been adjudicated and has attained finality. At least thereafter, the defendant should have been careful and followed up the proceedings and execution. Instead of doing so, he remained exparte and filed application in E.A. No. 4217 of 2016 to set aside the exparte order.

6. The learned Judge has been very indulgent and has passed a very reasoned order stating that only 1/6th of the decree amount has to be deposited.

7. This is an exercise of discretion by the learned Judge and it need not be interfered with under Article 227 of the Constitution of India. In any event, I am satisfied that the condition that has been imposed, especially in a



C.R.P. (NPD) No. 2284 of 2017

case of post decree, is not excessive or unconscionable.

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8. The time is extended for payment of the condition imposed by the learned trial Judge till 31.08.2023. The said amount can be deposited in two equal installments i.e. first installment of Rs.45,000/- should be paid on or before 31.07.2023 and second installment of Rs.45,000/- should be paid on or before 31.08.2023.

9. With the above modification, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.07.2023

Maya

NCS : Yes/No

Index : Yes/No

To

The IX Assistant Judge,
City Civil Court, Chennai.

V.LAKSHMINARANAN, J.

4/5



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C.R.P. (NPD) No. 2284 of 2017

Maya

C.R.P. (NPD) No. 2284 of 2017

04.07.2023