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C.R.P.No.3758 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3758 of 2023

and

C.M.P.No.23394 of 2023

R.Rajkumar

... Petitioner

-Vs-

1. State Bank of India,
rep. by its Chief Manager,
Dharapuram Branch,
Tiruppur.

2. M/s. National Collateral Management
Services Limited,
rep. by its Authorised Signatory
Mr.Rosalah Yeluri

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.08.2023 made in I.A.No.1 of 2023 in C.O.S.No.05 of 2023 on the file of Subordinate Judge, Dharapuram.

For Petitioner

: Mr.M.Guruprasad



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C.R.P.No.3758 of 2023

ORDER

Challenging the impugned order passed in I.A.No.1 of 2023 in O.S.No.5 of 2013 by the learned Sub-Judge, Dharapuram, the Revision Petitioner/2nd defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the 1st Respondent Bank/plaintiff filed a suit in C.O.S.No. 5 of 2013 against the defendants 1 and 2 for the relief of recovery of money. Notice was served and the 2nd defendant entered his appearance on the first hearing through advocate on 01.06.2023 and the case was adjourned to 12.07.2023. As he was not able to appear on that day, he was set exparte. Immediately, on coming to know about the same, within a week, he filed an interlocutory application to set aside the exparte decree, but the said application was allowed by the trial judge on condition to deposit 50% of the suit amount into the court. Challenging the said findings, the 2nd defendant preferred this Civil Revision Petition.



C.R.P.No.3758 of 2023

WEB COPY

4. The learned counsel for Revision Petitioner would submit that the total claim amount was nearly about Rs.11,00,000/-, but without any defence, the trial judge directed him to deposit 50% of suit amount, as such is erroneous one. Hence, he prayed to set aside the findings of the trial judge.

5. On perusal of records, it would reveals that the Revision Petitioner is aged about 57 years old man and he is following the court proceedings, but on one occasion, he failed to appear, however, within a week, he filed the application to set aside the exparte decree, but the trial judge allowed the application on condition to deposit 50% of suit amount into the court, which is onerous one. Furthermore, while filing the application under Order 9 Rule 7 of C.P.C., he filed his written statement along with the said application. Hence, the trial judge ought not to have imposed the condition and ought to have permitted to proceed with the trial. Therefore, the order passed by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings



C.R.P.No.3758 of 2023

rendered by the trial judge imposing 50% of claim in I.A.No.1 of 2023 in

C.O.S.No.5 of 2023 is set aside. No costs. Consequently, connected Civil

Miscellaneous Petition is closed.

30.10.2023

Index : Yes/No

Speaking Order : Yes/No

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To

Sub-Judge, Dharapuram.



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C.R.P.No.3758 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.3758 of 2023

30.10.2023