



C.R.P.(NPD)(MD).Nos.1975 of 2011 and 1273 & 1350 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 02.02.2023

DELIVERED ON: 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).Nos.1975 of 2011 & 1273 and 1350 of 2015

and

M.P(D).No.1 of 2011 and M.P(MD).Nos. 1 &1 of 2015

R.S.Arumugam

...Petitioner in all the petitions

Vs

1.Sundarraaj

...Respondent in CRP.No.1975 of 2011

2.Sathiabama

...Respondent in CRP.No.1273 of 2015

3.Ganapathy

...Respondent in CRP.No.1350 of 2015

PRAYER in CRP.No.1975 of 2011: Civil Revision Case is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 06.07.2011 passed in I.A.No.172 of 2008 in O.S.No.92 of 2003 on the file of Sub Court, Ambasamudram, allow this revision.



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PRAYER in CRP.No.1273 of 2015: Civil Revision Case is filed under Section 115 of Code of Civil Procedure, to set aside the fair order and decreetal order dated 06.07.2011 passed in I.A.No.173 of 2008 in O.S.No. 95 of 2003 on the file of the Subordinate Court, Ambasamudram, Tirunelveli District by allowing this Revision Petition and issue appropriate orders.

PRAYER in CRP.No.1350 of 2015: Civil Revision Case is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 06.07.2011 passed in I.A.No.154 of 2008 in O.S.No.74 of 2003 on the file of the Sub Court, Ambasamudram, allow this revision.

For Petitioner : Mr.V.Balaji
in all the petitions

For Respondent : Mr.A.Arumugam
in CRP.Nos.1975 of 2011 & 1273 of 2015

: Mr.S.Palani Velayutham
in CRP.No.1350 of 2015

COMMON ORDER

In all the revision petitions, the defendants in a suit for recovery of money based upon the pro-note, are the revision petitioners.



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2.CRP(MD).No.1975 of 2011 has been filed challenging an order passed in I.A.No.172 of 2008 in O.S.No.92 of 2003 on the file of the Subordinate Court, Ambasamudram. The said suit was filed by the respondent herein for the relief of recovery of money based upon certain pro-notes. The defendant/revision petitioner has not filed the written statement. Hence, he was set exparte on 17.12.2003 and an exparte decree came to be passed on 05.01.2004. To set aside the said exparte decree, the revision petitioner has filed I.A.No.172 of 2008 to condone the delay of 1238 days in filing an application to set aside the exparte decree.

3.CRP(MD).No.1273 of 2015 arises out of an order passed in I.A.No.173 of 2008 in O.S.No.95 of 2003 on the file of the Subordinate Court, Ambasamudram. The said suit was filed by the respondent for the relief of recovery of money based upon six pro-notes. Since the defendant had not filed his written statement, he was set exparte on 21.11.2003 and an exparte decree came to be passed on 07.01.2004. To condone the delay for setting aside the exparte decree, the petitioner had filed I.A.No.173 of 2008 and the said application was dismissed. Challenging the same, the above revision has been filed.



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4.CRP(MD).No.1350 2015 arises out of O.S.No.74 of 2003 on the file of the Subordinate Court, Ambasamudram. The said suit was filed by the respondent for the relief of recovery of money based upon a pro-note. Since the defendant had not filed a written statement, he was set exparte on 21.11.2003 and an exparte decree came to be passed on 03.01.2004. In order to condone the delay in setting aside the exparte decree, the revision petitioner had filed I.A.No.154 of 2008 and the same was dismissed. Challenging the same, the present revision petition has been filed.

5.In all the above applications filed for condoning the delay, common reasons have been stated. According to the defendant/revision petitioner, an F.I.R was registered as against him and other family members on 22.05.2003 in Crime No.9 of 2003 on the file of Economic Offences Wing, Tirunelveli for the alleged offence of not returning the deposit amount to the depositors. The police and the depositors threatened him to settle the amount and hence, he was forced to leave Ambasamudram in February 2003. In view of false cases filed against him, he could not come back to Ambasamudram Town to defend the suit. After settlement of all issues, he came back to the Town only in May 2007.



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6.The revision petitioner had contended that he could not reside in a particular Town, since the police were in search of him. Hence, his Counsel could not contact him. Only after reaching Ambasamudram in May 2007, he came to know that he was set exparte in the suit and an exparte decree has been passed against him. He had further contended that the exparte decree has been obtained on the basis of certain pro-notes which are time barred and hence, he has got a good defence in the suit. He had further contended that he had reasonable cause for not attending the Court hearing during the relevant point of time. Unless the delay is condoned, he will be a put to great hardship.

7.The learned counsel for the petitioner had contended that his father was conducting a chit fund business and due to non-refund of the deposit amount, he was implicated in a criminal case and he was away from the Town due to threat from the police officials and the depositors. He was away from the Town from February 2003 to May 2007. Since he was running from one place to another, his Counsel is also could not contact him to inform about the details of the case. That apart, the suit based on time barred pro-note. is not maintainable and he has got a good



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defence in the suit. He had further contended that the petitioner has made out a case that there was a reasonable cause for not attending the Court hearing between 2003 to 2007. Hence, he prayed for allowing the revision petitions with a direction to the trial Court to dispose of the suit within a period of time frame.

8.The trial Court after considering the submissions made on either side, had arrived at a finding that the petitioner has not filed any proof to show that he was living in Chennai and Coimbatore during the relevant point of time. The trial Court has also found that mere lodging of F.I.R against him, cannot be construed to be a valid reason for his absence from Ambasamudram.

9.The trial Court further found that during the relevant point of time, the petitioner had filed insolvency proceedings and also conducted the same through his Advocate. Based upon the said finding, the trial Court dismissed all the three applications filed in three different suits for condoning the delay in setting aside the decree. Challenging the said order, the above revision petitions have been filed.



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10.The learned counsel appearing for the respondents/plaintiffs had contended that the petitioner has not placed on record any document except the F.I.R to indicate that he was away from the Town. He had further contended that the petitioner had filed insolvency proceedings during the relevant point of time and he was also conducting the same through an Advocate. Hence, he prayed for dismissal of the revision petitions.

11.I have considered the submissions made on either side and perused the materials available on record.

12.The revision petitioner is the defendant in three suits which were filed for recovery of money based upon various pro-notes. All the three suits have been filed between April to June 2003. It is not the case of the defendant that he did not receive summon. Even according to the defendant, he had left Ambasamudram in February 2003. If really the defendant had left Ambasamudram Town in February 2003, certainly he would have pleaded that summons were not served upon him in the suits that were filed in April and June 2003. Therefore, it is clear that the case



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pleaded by the defendant that he had left Ambasamudram Town in February 2003 is not believable.

13.Once the defendant had received summons, it is for him to contact his Counsel regularly to verify about the status of the case. Even as per the affidavit filed in support of the condone delay application, the revision petitioner was granted anticipatory bail. Therefore, the contention of the petitioner that there was a threat of arrest and hence, he was away from the Town is also not believable.

14.As rightly contended by the learned counsel appearing for the respondents, the revision petitioner during the same period, had filed insolvency proceedings in Ambasamudram Court and he had also engaged a Counsel to conduct the same. Therefore, the contention of the revision petitioners that he could not contact his counsel between February 2003 to May 2007 is also not believable.

15.The revision petitioner has contended that only due to certain threat from the police and other depositors, he was away from the town and this cannot be considered to be a reasonable cause for not attending



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the Court hearing for nearly a period of 4 years. No records have been placed before this Court with regard to the fact that the petitioner had permanently shifted to Chennai or he was residing in Coimbatore for some period. Therefore, it is clear that the petitioner has not properly explained the delay of more than 4 years in filing an application to condone the delay in setting aside the exparte decree. The trial Court has rightly considered the contentions of the learned counsel for the respondents herein and has arrived at a finding that the cause put forwarded by the defendant is not believable. Based upon the said findings, the trial Court has proceeded to dismiss the condone delay application. After perusal of the pleadings and the order passed by the trial Court, it is clear that there is no illegality or infirmity in the order passed by the trial Court.

16.In view of the above said facts, all the revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The Subordinate Judge
Ambasamudram,
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery common order made in
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& 1273 and 1350 of 2015
and
M.P(D).No.1 of 2011 and
M.P(MD).Nos. 1 &1 of 2015

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