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CRP (MD) No.1679 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	14.07.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1679 of 2023

and

CMP(MD)No. 8362 of 2023

Jamimu Begam

... Petitioner

Vs.

R.Amaravathi

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 30.08.2022 made in C.M.A.No.06 of 2019 on the file of the Principal Subordinate Judge, Thanjavur, confirming the fair and decreetal order dated 27.07.2018 made in I.A.No.473 of 2016 in O.S.No.175 of 2006, on the file of the District Munsif Court, Thanjavur.

For Petitioner : Mr.PT.S.Narendravasan

For Respondent : Mr.R.Rajaraman



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ORDER

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This civil revision petition is preferred as against the order passed in CMA(MD) No.6 of 2019 on the file of Principal Sub Court, Thanjavur, confirming the fair and decretal order dated 27.07.2018 made in I.A.No.473 of 2016 in O.S.No.175 of 2006 on the file of the District Munsif Court, Thanjavur.

2. The suit in O.S.No.175 of 2006 is filed for the relief of redemption of mortgage and also for surrender of the possession of the suit property with the surplus profits. In the above suit, the second defendant was set ex parte and an ex parte decree was passed on 22.08.2014. Therefore, the second defendant filed an application in I.A.No.473 of 2016 to set aside the ex parte decree passed against her. The above petition was resisted on the side of the plaintiff that there was no sufficient cause to allow the above application and there is no supporting documents to prove the illness suffered by the petitioner. The trial Court, in its order, dated 27.07.2018 dismissed the above application by stating that sufficient reason was not attributed by the



petitioner to allow the application. Against which, the petitioner has preferred an appeal in C.M.A.No.6 of 2019 on the file of the Principal Sub Court, Thanjavur, which was also dismissed with costs on 30.08.2022. Aggrieved by this, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner would submit that the petitioner was unable to attend the Court due to viral fever infection. The petition in I.A.No.473 of 2016 to set aside the ex parte decree, was filed within a period 30 days without any delay and sufficient reason is attributed by the petitioner for her non-appearance. However, the Court below without considering the explanation given by the petitioner erroneously dismissed the above application. Since the suit is for redemption of mortgage, the Courts below ought to have given an opportunity to the petitioner herein to prove that the plaintiff is not entitled for any relief sought for in the plaint. Hence, he prays to allow this revision.

4. On the other hand, the learned counsel for the respondent would submit that the petitioner has not filed any document to prove her ailments



and treatment and the above attempt of the petitioner, is only to drag on the proceedings. He would further submit that the Courts below have rightly dismissed the petition filed by the petitioner, which call for no interference.

5. Heard on both sides and records perused.

6. Admittedly, it is a suit for redemption of mortgage filed by the respondent/plaintiff against the petitioner/defendant. When the suit was posted for cross examination of P.W1, the petitioner/second defendant did not appear before the trial Court. Hence, the petitioner/second defendant was set *ex parte* and *ex parte* decree was passed against her on 22.08.2014. Thereafter, she filed an application to set aside the *ex parte* decree by stating that she was suffering from viral infection. The other reason stated by the petitioner is that her counsel was engaged in another Court. Hence, he was unable to cross examine P.W.1, but the Hon'ble Apex Court has held that the advocate engaged in another Court, cannot be a sufficient ground. Further, the petitioner has not filed any documentary evidence in order to prove the ailment and treatment. Therefore, the Courts below have rightly held that no



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sufficient reason is attributed by the petitioner to set aside the ex parte decree passed on 22.08.2014. Therefore, the orders passed by the Courts below call for no interference and the same is confirmed. Accordingly, this civil revision petition is dismissed. No costs.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

- 1.The Principal Subordinate Judge,
Thanjavur.
- 2.The District Munsif,
Thanjavur.



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