



C.R.P(MD)No.1194 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1194 of 2023

and

C.M.P(MD)No.5773 of 2023

M.Samiyappan

...Revision Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

M.Chinnakalai

...Respondent/Petitioner/
Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order, dated 04.11.2022 passed in I.A.No.59 of 2020 in I.A.No.552 of 2019 in O.S.No.368 of 2019 on the file of the Subordinate Court, Uthamapalayam.

For Petitioner : Mr.D.Nallathambi

ORDER

The present Civil Revision petition has been filed against the fair and decretal order, dated 04.11.2022 passed in I.A.No.59 of 2020 in



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I.A.No.552 of 2019 in O.S.No.368 of 2019 on the file of the Subordinate Court, Uthamapalayam.

2. The petitioner is the plaintiff before the Subordinate Court, Uthamapalayam in O.S.No.368 of 2019. The said suit was filed by the petitioner against the respondent herein for recovery of money allegedly due from the respondent/defendant on a promissory note.

3. The respondent was set *ex parte* on 13.01.2020 in I.A.No.552 of 2019. The respondent thus filed I.A.No.59 of 2020 to set aside the *ex parte* order setting the respondent *ex parte* under Order 9 Rule 7 of C.P.C. The Subordinate Court, Uthamapalayam has allowed the I.A.No. 59 of 2020 in I.A.No.552 of 2019 with the following observations:

"(v) The respondent for the reason that the petitioner had examined witnesses he had also examined him as witness. His oral evidence would no way aid the respondent to successfully deny the reasons stated by the petitioner. This Court sees that the main suit was filed based on the promissory note and no dispute was involved relating to the property or money was not given based on this property alone. The petitioner should be given an opportunity to defend the I.A.No.552 of 2019 so that an order based on merits would be passed. The respondent/plaintiff cannot take undue advantage of the exparte order of attachment passed before the judgment. The oral evidence of PW1 to PW3 and the documentary evidence filed by the petitioner substantiates the reason stated by the petitioner. This Court finds fit to set aside the exparte order passed against the petitioner on 13.01.2020 by allowing the



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prayer of the petitioner.

(vi) In the result this petition is allowed. No costs."

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4. I do not find any reasons to interfere with the impugned order as no prejudice will be caused to the petitioner/plaintiff. That apart, it is noticed that the impugned order was passed on 04.11.2022 and the certified copy of the order was delivered as early as on 23.11.2022. The petitioner has filed the present civil revision petition only on 25.04.2023.

5. Clearly, it is intended to delay the proceedings. Therefore, the present Civil Revision Petition is liable to be dismissed and accordingly, it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Subordinate Court,
Uthamapalayam..

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,



Madurai.

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C.SARAVANAN,J.

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