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C.R.P.(MD)Nos.2575 and 2576 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.2575 and 2576 of 2022
and
C.M.P.(MD)Nos.12669 and 12670 of 2022

Rethinakumar, S/o.Palanikumar

.. Petitioner in both the C.R.Ps.

Versus

VN.Kamaraj

.. Respondent in both the C.R.Ps.

Prayer in C.R.P.(MD)No.2575 of 2022 :- Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 11.11.2022, in E.A.No.1 of 2022 in E.P.No. 20 of 2022, on the file of the Sub Court, Sathur.

Prayer in C.R.P.(MD)No.2576 of 2022 :- Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 11.11.2022, in I.A.No.1 of 2022 in O.S.No. 98 of 2017, on the file of the Sub Court, Sathur.

For Petitioner in both the C.R.Ps. : Mr.VR.Shanmuganathan

For Respondent in both the C.R.Ps. : Ms.S.Mahalakshmi

COMMON ORDER

Since the issues involved and the parties in both the Civil Revision Petitions are one and the same, these Civil Revision Petitions are disposed of by this common order.



2.Both the proceedings arise out of the same proceedings before the Sub Court, Sathur, in O.S.No.98 of 2017, filed by the respondent/plaintiff to recover the amount allegedly due from the petitioner based on the pro-note that is said to have been executed by the petitioner.

3.C.R.P.(MD)No.2575 of 2022 has been filed against the order dated 11.11.2022 passed in E.A.No.1 of 2022, dismissing the application filed by the petitioner to stay the Execution Proceedings.

4.In C.R.P.(MD)No.2576 of 2022, the petitioner has challenged the impugned order dated 11.11.2022, passed in I.A.No.1 of 2022 in O.S.No.98 of 2017, dismissing the application filed by him to condone the delay in filing the application to set aside the ex parte decree, dated 09.07.2018.

5.Initially, the petitioner was set ex parte on 18.06.2018 and thereafter, ex parte decree came to be passed on 09.07.2018. The Trial Court has dismissed the application for condoning the delay in filing the application to set aside the ex parte decree dated 09.07.2018, on the ground that the petitioner has not clearly explained reasons for condoning the delay of 1460 days while filing the application. The Trial Court has disbelieved the affidavit of the petitioner that he was suffering from jaundice between 08.07.2018 and 01.07.2022. The Trial Court has taken note of



F.I.R. lodged by one Kamaladevi against the petitioner and four others in Crime No. 575 of 2018 on 06.10.2018 and therefore, the explanation in the affidavit that the petitioner had gone to North India in connection with his avocation on the dates when the case was called cannot be acceptable.

6.The learned counsel for the petitioner submits that at the time of admission, the petitioner has deposited 25% of the amount decreed on 09.07.2018 and now, further undertakes to deposit another sum of Rs.3,00,000/-. The learned counsel for the petitioner further submits that the petitioner disputes the pro-note on the strength of which, the above suit was filed, wherein the petitioner was set ex parte on 18.06.2018 and ex parte decree was passed after recording evidence on 09.07.2018. That apart, it is submitted that the petitioner although had money transaction with the respondent, the respondent had undertaken to withdraw the suit and therefore, the petitioner was under the *bona fide* belief that the suit will not be pursued by the respondent and therefore, he did not appear and the dispute between the petitioner and the respondent will be resolved *inter se*.

7.Per contra, the learned counsel for the respondent submits that the impugned orders of the Sub Court, Sathur, in E.A.No.1 of 2022 in E.P.No.20 of 2022 and I.A.No.1 of 2022 in O.S.No.98 of 2017 are well reasoned and require no interference. It is submitted that the petitioner has not explained the details as to



when he suffered from jaundice along with any documents to show that he had taken any treatment. That apart, it is submitted that during the period when the petitioner said to have gone to North India, he had indeed appeared before the Sathur Town Police Station in connection with the complaint lodged by one Kamaladevi on 08.10.2018, pursuant to which, a case in Crime No.575 of 2018 was registered against the petitioner and others.

8.That apart, it is submitted that the petitioner entered appearance in the above case in O.S.No.98 of 2017 through counsel on 09.08.2017 and the case was adjourned on seven different occasions till 18.06.2018 for the petitioner to file a written statement. However, instead of taking advantage of the time given, the petitioner allowed the Trial Court to pass the ex parte decree on 09.07.2018 after recording the evidence of the respondent. It is therefore submitted that both the Civil Revision Petitions should be dismissed.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

10.It appears that the petitioner and the respondent may have had money transactions between themselves. Whether the petitioner had indeed executed the suit pro-note or not is a matter, which can be decided by the Court, provided the



application filed in I.A.No.1 of 2022 to condone the delay of 1460 days in filing the application to set aside the ex parte decree is allowed.

11.The petitioner has shown his *bona fide* at the time of admission by giving an undertaking to deposit 25% of the decree amount. Today, the learned counsel for the petitioner has also given an undertaking that the petitioner will deposit another sum of Rs.3,00,000/- over and above the amount already deposited.

12.The petitioner has not clearly explained the delay and was perhaps negligent in not filing the written statement and has approached the Court by filing I.A.No.1 of 2022 to condone the delay of 1460 days and also to stay the execution proceedings by filing E.A.No.1 of 2022 only after notice was issued in E.P.No.20 of 2022 when the respondent sought to execute the decree passed by the Trial Court. The petitioner has been negligent by allowing the suit to be decreed ex parte. Nevertheless, the issue as to whether the petitioner had indeed executed the subject pro-note or not will have to be decided, as otherwise the petitioner will not only liable to pay Rs.9,22,666/-, but also face the consequences in E.P.No.20 of 2022. The document may require examination by the Forensic Department. Therefore, to balance the interest of the parties hereto, I am inclined to allow the Civil Revision Petitions on the following terms:-



(i) The petitioner shall deposit the balance pro-note amount after deducting the amount already deposited by him, pursuant to the order of this Court dated 22.12.2022, to the credit of E.P.No.20 of 2022, on the file of the Sub Court, Sathur, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall pay a sum of Rs.30,000/- [Rupees Thirty Thousand only] to the respondent towards costs.

(iii) On such compliance, the application filed by the petitioner in I.A.No.1 of 2022 in O.S.No.98 of 2017 and E.A.No.1 of 2022 in E.P.No.20 of 2022 shall stand allowed. The Trial Court shall thereafter proceed with the trial and dispose the suit as expeditiously as possible, preferably within a period of 15 months.

(iv) It is made clear that in case the petitioner fails to comply with the aforesaid conditions, the concession given in this order shall stand automatically vacated *sine die*.

13.These Civil Revision Petitions are allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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05.06.2023



C.R.P.(MD)Nos.2575 and 2576 of 2022

To

The Sub Judge,
Sathur.



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C.SARAVANAN, J.

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Common Order made in
C.R.P.(MD)Nos.2575 and 2576 of 2022

05.06.2023