



C.R.P.No.102 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No. 102 of 2022
and C.M.P.No.577 of 2022

1. Subba Row Apparels,
No.5 Kumaran Colony,
7th Street, Vadapalani, Chennai-600026.

2. J.Raja Ramesh

3. J.Raja Sekar Babu

...Petitioners/Defendants

Vs.

7, Degrees South Limited,
Rep. by its Power of

Attorney Holder, Mr.R. Ravichandran

... Respondent/Plaintiff

PRAYER: Petition filed under Section 115 of Civil Procedure Code,
praying to set aside the order and decree passed in I.A.No.1 of 2019 in
O.S.No.9278 of 2010 dated 11.08.2021 on the file of the VII Additional City
Civil Judge, Chennai in so far as it is against the petitioner.

For Petitioners : Mr.Kodaiarasu

For Respondent : No appearance



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ORDER

Challenging the impugned order made in I.A.No.1 of 2019 in O.S.No.9278 of 2010, dated 11.08.2021, the aggrieved defendants have preferred the present Civil Revision Petition.

2. Suit in O.S.No.9278 of 2010 was filed by the respondent herein for recovery of money. An exparte decree came to be passed on 28.04.2018. The aggrieved petitioners filed I.A.No.1 of 2019 in order to set aside the above exparte decree dated 28.04.2018 and the said I.A. came to be allowed by the Court below on condition that the defendants 1 to 3/ petitioners herein shall deposit 1/3rd of the decree amount to the credit of the Court in CCD.

3. Learned counsel appearing for the revision petitioners submitted that the Court below failed to consider the valid reasons cited by the revision petitioners/plaintiffs that they were unable to attend the Court on the specified date of hearing, as the petitioners' counsel underwent the treatment for cervical spondylitis, which was the cause of delay in prosecuting the suit.

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He also submitted that the lower Court ought not to have passed a non-speaking ex-parte decree against the petitioners/ defendants 1 to 3, on condition that the revision petitioners/defendants shall deposit 1/3rd of the decree amount into the Court on or before 13/09/2021, failing which, the petition stands dismissed, which caused overburden to the petitioners. Aggrieved by the same, the present Civil Revision Petition is filed.

4. It is the further contention of the learned counsel for the revision petitioners that the learned Judge ought not to have imposed onerous condition of depositing 1/3rd of the decree amount, when the counsel on record was suffering from severe health problems, which prevented him from attending court proceedings. He also submitted that they are willing to pay some reasonable amount to the credit of the suit.

5. Heard the learned counsel appearing for the revision petitioners. Though notice was served on the respondent, there is no representation on behalf of him.

6. Perusal of records would clearly reveal that while setting aside the ex-parte decree passed by the Court below, imposition of conditional order to pay the costs must be reasonable and must have some justification with



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regard to the circumstances and the same cannot be imposed arbitrarily.

Therefore, this Court is of the considered view that in the interest of justice, it would be appropriate to impose a reasonable amount to set aside the ex parte decree.

7. In view of the above, this Civil Revision Petition is disposed of, by setting aside the conditional Order of the trial court, dated 11.08.2021 passed in I.A.No.1 of 2019 in O.S.No.9278 of 2010 before the VII Additional City Civil Judge, Chennai. However, the revision petitioners/defendants are directed to pay a sum of Rs.5000/-(Rupees five thousand only) to the respondent (party). The said amount of costs should be paid by the revision petitioners/defendants within a period of two(2) weeks from the date of receipt of a copy of this order.

8. Upon receipt of such payment, the learned VII Additional City Civil Judge, Chennai is directed to take up the suit in O.S.No.9278 of 2010 on file and dispose of the same within a period of three(3) months thereafter.



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Accordingly, the Civil Revision Petition stands disposed of. No costs.

Consequently connected miscellaneous petition is closed.

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Internet:Yes/No
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The VII Additional City Civil Court,
Chennai

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J.NISHA BANU,J.

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Order made in

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