



C.R.P.No.1851 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1851 of 2024 and
C.M.P.No.9754 of 2024

K.Sangamithra

... Petitioner

Vs.

N.R.Usha

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to allow the Civil Revision Petition by setting aside the order and decretal order dated 23.11.2023 passed in I.A.No.1/2023 in O.S.No.2789/2018 by the IV Asst. City Civil Court, Chennai.

For Petitioner : Mr.R.Thanjan

For Respondent : No Appearance

ORDER

The petitioner/defendant in O.S.No.2789 of 2018 was set exparte *vide* judgment and decree, dated 30.10.2018 by the learned VII Assistant Judge (FAC), IV Assistant City Civil Court at Chennai. To condone the delay of 1474 days in filing petition to set aside exparte judgment and decree, dated



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30.10.2018, the petitioner filed I.A.No.1 of 2023 in O.S.No.2789 of 2018 and the same was dismissed *vide* impugned fair and decreetal order, dated 23.11.2023 by the learned III Assistant Judge (FAC), IV Assistant City Civil Court at Chennai. Challenging the same, the present civil revision petition is filed.

2.Despite service of notice and name printed in the cause list, no representation for the respondent either in person or by any counsel.

3.The learned counsel for the petitioner submitted that the petitioner was set *exparte* on 30.10.2018 and thereafter, execution petition in E.P.No.4095 of 2022 filed for execution of decree. At that time only, the petitioner came to know about filing of suit and judgment and decree, dated 30.10.2018. The case projected against the petitioner is that the petitioner and respondent were working together for quite sometime and they got acquainted with each other. The petitioner said to have asked Rs.3,00,000/- from the respondent as loan on the promise that she would repay the same within six months and also agreed to pay interest of 12% per annum. For



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loan amount borrowed, the petitioner executed promissory note, dated 25.04.2015. Since the petitioner failed to pay the amount despite repeated demand, the respondent lodged a complaint with Villivakkam Police Station on 19.11.2016 and also issued legal notice, dated 24.12.2017 to the petitioner and thereafter she filed summary suit directing the petitioner herein to pay a sum of Rs.4,80,000/- with future interest at the rate of 12% per annum. On the side of the plaintiff/respondent, Exs.A1 to A7 marked and the petitioner was set exparte and suit decreed in favour of the respondent. The case of the petitioner is that the petitioner's mother borrowed a sum of Rs.3,00,000/- from the respondent in the year 2011, at that time, signed blank promissory note obtained from the petitioner. Subsequently, the petitioner's mother discharged the entire loan amount with interest but the respondent failed to return back signed blank promissory note which was utilized in the suit. He further submitted that the proceedings in the suit commenced on 11.07.2018 and suit decreed on 30.10.2018 without giving proper opportunity to the petitioner. The petitioner came to know about pendency of the suit only after receiving notice in E.P.No.4095 of 2022 on 11.10.2022. Hence, she filed petition to



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condone the delay of 1474 days which the lower Court failed to consider.

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4.The learned counsel for the petitioner submitted that the petitioner has to necessarily be made as a party, recall the witness, cross examine them and put forth his defence. Otherwise the valuable right of the petitioner would get lost. Obtaining exparte order is a short-circuiting one. To show his bonafide, the petitioner is ready to deposit some amount to the credit of the suit.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner has to recall the witnesses, cross examine them and put forth his defence. Anyhow, the petitioner is ready to deposit some amount in the suit.

6.In view of the above, this Court directs the petitioner to deposit Rs.2,00,000/- (Rupees two lakhs only) on or before 05.08.2024 to the credit of the suit in O.S.No.2789 of 2018 on the file of the IV Assistant City Civil Court at Chennai. On such deposit, the learned IV Assistant Judge, IV



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Assistant City Civil Court at Chennai shall condone the delay, set aside the exparte order, dated 30.10.2018 and permit the petitioner to participate in the trial in O.S.No.2789 of 2018.

7.In the result, this civil revision petition stands allowed setting aside the impugned fair and decreetal order, dated 23.11.2023 in I.A.No.1 of 2023 in O.S.No.2789 of 2018 passed by the learned III Assistant Judge (FAC), IV Assistant City Civil Court at Chennai. Consequently, connected civil miscellaneous petition is closed. No costs.

12.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

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To

The IV Assistant City Civil Court at Chennai.

Note: Issue Order Copy on 22.07.2024.



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M.NIRMAL KUMAR, J.

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