



WEB COPY



C.R.P.Nos.479 of 2021 and 1433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.Nos.479 of 2021 and CMP No.4198 of 2021
and CRP No.1433 of 2022

1. V.N. Vinayagamorthy S/o. Nagarathinam
2. V. Indira W/o. V.N. Vinayagamorthy ... Petitioners common in both CRPs

Vs.

K. Srinivasan S/o. Kuttirajan ...Respondent common in both CRPs

PRAYER in C.R.P. No.479 of 2021: Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, praying to set aside the fair and decreetal order dated 10.07.2020 made in E.P. No.35 of 2018 in O.S. No.172 of 2016 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District.

PRAYER in C.R.P. No.1433 of 2022: Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, praying to set aside the fair and decreetal order dated 21.11.2019 made in I.A. No.206 of 2018 in O.S. No.172 of 2016 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District.



WEB COPY



C.R.P.Nos.479 of 2021 and 1433 of 2022

For Petitioners : Mr. K. Selvaraj

For respondent : S. Arivazhagan

COMMON ORDER

These Civil Revision petitions are filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking to condone the delay of 355 days in filing petition to set aside the exparte decree passed against the petitioner in the above suit on 29.06.2017 and to set aside the order allowing the attachment of 1/3rd salary of the 2nd respondent in excess of Rs.1,000.

2. In the affidavit filed in support of the condone delay petition, it has been stated by the petitioner that due to illness, he could not appear before the Court on 25.11.2016. It was also stated by the petitioner that the petitioner was incharge of conducting the case on behalf of his wife, the 2nd petitioner herein and hence the 1st petitioner filed affidavit on behalf of 2nd petitioner also. Not satisfied with the reasons assigned by the petitioner in the affidavit filed in support of the condone delay petition, the Trial Court dismissed the application. Aggrieved by same, the petitioner is before this Court.



3. The learned counsel for the petitioner submitted that in pursuance of the interim order passed by this Court in CRP No.479 of 2021, the petitioner deposited a sum of Rs.50,000/- before the Trial Court. Having regard to the said fact, this Court shall take a lenient approach and shall give an opportunity to the petitioner to contest the case on merits.

4. The learned counsel appearing for the respondent contended that the petitioner failed to explain the reason for the delay and hence the Trial Court was correct in dismissing the application.

5. In the affidavit filed in support of the condone delay petition, the petitioner stated that due to his illness, he failed to appear before the Court and failed to follow the application to set aside the exparte decree within a time. The respondent was directed to pay a sum of Rs.4,45,737/- to the petitioners herein, together with interest. It is seen from the records that against the order of the attachment passed against the petitioners, they preferred the Civil Revision Petition in No.479 of 2021 and in that CRP, an interim order was passed in favour of the petitioners on condition that the petitioners shall jointly



or severally deposit a sum of Rs.50,000/- to the credit of E.P. No.35 of 2018 on the file of learned Subordinate Judge, Gudiyatham. The learned counsel for the petitioner submitted that a sum of Rs.50,000/- was deposited to the credit of E.P. No.35 of 20188 as per the condition imposed by this Court.

6. It is also seen that along with this petition to set aside the exparte decree, the petitioner has also filed his written statement by denying the suit transaction. Taking into consideration the fact that in order to show bonafide, the petitioner also filed written statement along with petition to set aside the exparte decree, this Court is inclined to take liberal approach and to give an opportunity to contest the case on merits.

7. Accordingly, the Civil Revision Petition in CRP No.1433 of 2022 is allowed with a condition that the petitioners shall deposit a further sum of Rs.50,000/- to the credit of O.S. No.172 of 2016, on the file of learned Subordinate Judge, Gudiyatham within a period of **4 weeks** from the date of receipt of a copy of this order. If the petitioners fail to deposit the amount as directed, the Civil Revision Petition shall automatically stands dismissed



C.R.P.Nos.479 of 2021 and 1433 of 2022

without any reference to this Court. If the deposit is made, the Trial Court is directed to take up the petition to set aside the exparte decree and dispose of the same on merits in accordance with law as expeditiously as possible within a period of **8 weeks** from the date of receipt of a copy of this order.

8. In view of the allowing of CRP No.1433 of 2022, the **C.R.P. No.479 of 2021** filed against the order of attachment passed in Execution petition is also allowed by setting aside the order of attachment dated 10.07.2020 in E.P. No.35 of 2018. There shall be no order as to costs. The connected miscellaneous petition is closed.

27.02.2024

Index : Yes / No

Internet : Yes / No

mjs

To

The Subordinate Judge, Gudiyatham, Vellore District.

S.SOUNTHAR, J.

mjs



WEB COPY



C.R.P.Nos.479 of 2021 and 1433 of 2022

C.R.P.Nos.479 of 2021 and 1433 of 2022

27.02.2024