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CRP.No.1759 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1759 of 2019

and

CMP.Nos.18228 of 2023 & 11312 of 2019

A.Kuppan

... Petitioner

Vs.

1.The South Indian Bank Ltd.,
Rep.by its Branch Manager
P.M.Complex, First Floor
1/120, Bus Stand, Pasumathur
Katpadi Taluk, Vellore District.

2.L.Ganesan

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order and decretal order dated 25.03.2019 in I.A.No.142 of 2017 in OS.No.30 of 2014 on the file of the Subordinate Court, Vellore is even otherwise illegal and liable to be set aside.

For Petitioner : Mr.Sunny Sheen
for Ms.V.Srimathi
For Respondents : Mr.M.L.Ganesh for R1



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R2-Service awaited



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ORDER

This Civil Revision is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner to condone the delay of 627 days in filing petition to set aside the exparte decree passed on 19.03.2015.

2. The first respondent bank filed a suit for recovery of money against the petitioner and the second respondent. According to the first respondent, the second respondent availed a loan from the first respondent by pledging his jewels and the petitioner herein is the Gold Appraiser. It was specifically stated by the first respondent that the loan was sanctioned to the second respondent based on the certificate issued by the petitioner regarding purity of the jewel pledged and later on, it was found that the jewels pledged by the second respondent was spurious. Therefore, based on the indemnity bond executed by the petitioner, the suit was laid for recovery of money by impleading the petitioner as a party.



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3. In the affidavit filed in support of the petition to condone the delay, it was stated by the petitioner that he met with an accident on 10.03.2015. He got fracture due to the said accident and also other ailments, hence, he could not file his written statement in time and exparte decree was passed against him on 29.03.2015.

4. The said averment of the petitioner was seriously disputed by the first respondent bank by filing counter affidavit. It was also stated by the first respondent that the notice from the Court in execution proceedings was served on the petitioner. During July 2015, the petitioner entered appearance in the execution proceedings and he had taken time for filing counter statement and thereafter, the present application has been filed only on January 2017.

5. The Court below held that subsequent to the alleged accident during March 2015, the petitioner herein executed a settlement deed in favour of his wife as Ex.R1 on 24.06.2015 in order to defeat the right of the first



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respondent and therefore, there is no bonafides in the claim of the petitioner and consequently, dismissed the application. Aggrieved by the same, the petitioner is before this Court.

6. The learned counsel for the petitioner submitted that the petitioner had not appeared before the Court due to the fracture in the road accident on 10.03.2015 and therefore, after full recovery he filed the present application to set aside the exparte order with the condone delay petition. The learned counsel for the petitioner voluntarily offered to give immovable property security for the decretal amount. In view of the submission made by the learned counsel for the petitioner that he is ready to offer the immovable property security to the decretal amount, this Court feels an opportunity should be given to the petitioner to contest the case on merits.

7. It is settled law, when there is a conflict between the procedural law and substantial rights of the parties, the substantial justice of the parties has to be preferred. The technicalities shall not come in the way of substantial justice. Hence, this Court is inclined to take a liberal approach in



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view of the submission made by the learned counsel for the petitioner that his client is willing to offer immovable property security to the decretal amount.

8. In view of the same, the Civil Revision Petition stands allowed on condition that the petitioner gives immovable property security to the satisfaction of the trial Judge within a period of four weeks by depositing the original title documents. In case petitioner complies with condition within stipulated time, the impugned order is set aside and the Court below is directed to take up the petition to set aside the exparte decree and dispose it of on merits. In case, the petitioner fails to furnish immovable property security within time stipulated, the Civil Revision Petition shall stand dismissed without further reference to the Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.01.2024

Index : Yes / No
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S.SOUNTHAR, J.

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To

The Subordinate Court, Vellore.

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