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C.R.P.(PD)No.3050 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3050 of 2024

and

C.M.P.No.16399 of 2024

Maheswari

.. Petitioner

Vs.

R.Sarashwathy

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the condition order, dated 03.07.2024, passed in I.A.No.7 of 2024 in O.S.No.8498 of 2021 on the file of the learned VII Additional City Civil Judge at Chennai.

For Petitioner : Mr.M.Santhanamari

For Respondent : Mr.R.Ramesh

ORDER

The present Civil Revision Petition arises against an order passed by the learned VII Additional City Civil Judge at Chennai in I.A.No.7 of 2024 in O.S.No.8498 of 2021 dated 03.07.2024.



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2. O.S.No.8498 of 2021 is a suit presented for foreclosure of a mortgage.

3. There is no dispute about the relationship between the parties. The civil revision petitioner/defendant is the mortgagor and the respondent is the mortgagee. The mortgagor had given a sum of Rs.3,00,000/- on the strength of a mortgage deed executed by the civil revision petitioner in her favour. The mortgage was executed on 20.11.2014. The plaint admits that till November 2016 interest was being serviced, and thereafter, since there was no payment, the plaintiff/Sarashwathy was left with no other option but to come forth with a suit for foreclosure.

4. Summons were served on the defendant, and the defendant did not file the written statement on time. Therefore, she was set *ex parte* on 30.04.2022. Subsequently, an *ex parte* decree itself came to be passed on 20.06.2022. In terms of the said *ex parte* decree, the defendant was called upon to pay a sum of Rs.12,96,000/- together with the interest at the rate of 9% per annum. After the decree was passed, the civil revision petitioner took out an application to condone the delay and to set aside the *ex parte*



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decree as well as to set aside the order passed in I.A.No.516 of 2024. The said applications were allowed on 14.02.2024 on the condition that the civil revision petitioner pays a sum of Rs.5,000/- to the legal service authority. Even after the delay was condoned and the *ex parte* decree was allowed, the defendant was again set *ex parte* on 30.04.2024. To set aside the same, the present application was filed.

5. Taking note of the fact that the civil revision petitioner is regularly setting herself *ex parte*, and filing the applications to set aside the same, and getting the benefit of the orders of the Court, in order to bring some regularity in the proceeding, the learned trial Judge allowed the application to set aside the *ex parte* order, dated 30.04.2024, imposing a condition that the petitioner shall deposit a sum of Rs.3,00,000/- together with the interest at the rate of 9% per annum from December 2016. He passed this order on 03.07.2024, and directed the matter to be called on 15.07.2024.

6. Taking note of the fact that the petitioner/defendant did not deposit the amount on 02.08.2024, the learned Judge dismissed the petition, against which the present revision.



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7. Heard Mr.M.Santhanamari, appearing on behalf of the petitioner and Mr.R.Ramesh, appearing on behalf of the respondent.

8. The narration of the aforesaid facts would go to show that the civil revision petitioner has made it a habit to be *ex parte* and thereafter, file a petition to set aside the same. The plaintiff has not seen the colour of the coin from the year 2014. Therefore, the learned Judge in order to balance the interest of the plaintiff as well as the interest of the defendant, had imposed a condition that the petitioner shall deposit a sum of Rs.3,00,000/- together with the interest at the rate of 9% per annum from 2016. Whether the plaintiff will be entitled to 9% or a lesser amount would have to be decided only at the time of trial. As the learned Judge has balanced the interest of the plaintiff and directed the defendant only to deposit 1/4th of the decree amount, I do not find it to be an excessive one. This is more so, because the case on hand is one involving an admitted mortgage executed by the plaintiff in favour of the defendant.

9. In the light of the above discussion, the order passed by the learned Judge in I.A.No.7 of 2024 in O.S.No.8498 of 2021, dated 03.07.2024, is



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modified. As against the direction to deposit a sum of Rs.3,00,000/- together with the interest at the rate of 9 % per annum from December 2016, the petitioner shall deposit a sum of Rs.3,00,000/- within a period of **six weeks from today i.e. on or before 17.09.2024**. In case, the petitioner does not deposit the said amount on or before the aforesaid date, the benefit of the order will not enure to the civil revision petitioner. The Civil Revision Petition will stand automatically dismissed without any further reference to this Court.

10. Accordingly, the Civil Revision Petition stands partly allowed. The connected Civil Miscellaneous Petition is closed.

11. Call the matter for compliance on 17.09.2024.

06.08.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned VII Additional City Civil Judge,
Chennai

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and

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