



C.R.P.(PD)No.911 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.911 of 2024
and C.M.P.No.4531 of 2024

Jamunarani

.. Petitioner

Vs

1.Samicannou

2. Mohandass

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.04.2023 in I.A.No.2161 of 2022 in O.S.No.15 of 2013 on the file of the Principal District Court at Pondicherry.

For Petitioner : Mr.S.Venkatesan

For R1 : Mr.Samicannou, party-in-person

For R2 : No appearance



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ORDER

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This civil revision petition arises against the order passed by the learned Principal District Judge at Pondicherry in I.A.No.2161 of 2022 in O.S.No.15 of 2023 dated 11.04.2023.

2. The civil revision petitioner is the 1st defendant and the 2nd respondent herein is the 2nd defendant in the suit in O.S.No.15 of 2023. The said suit has been presented by the 1st respondent seeking for recovery of a sum of Rs.6,40,000/- together with interest at the rate of 12% per annum on the principal sum of Rs.5,00,000/-.

3. The cause of action for the suit is that the 1st respondent/plaintiff had lent a sum of Rs.5,00,000/- on 15.09.2010 to the defendants, who had also handed over the original title deeds of the document. They had not paid the amounts, due despite a demand made, by the 1st respondent on 18.10.2012. Being left with no other option, the 1st respondent herein presented the suit.



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4. Summons were taken in the suit. The 1st defendant was not served. Publication was ordered and the 1st defendant was set exparte.

The plaintiff entered the witness box and deposed as P.W.1. He marked the original of the promissory note as well as the title deeds that had been handed over to him.

5. The learned trial Judge, on consideration of the evidence that had been let before him, decreed the suit on 29.04.2013.

6. After having waited for a period of nearly nine years, the 1st defendant filed an application to set aside the exparte decree. Her plea was that, she was not served with summons and that her husband admitted to a hospital on 28.01.2013 and underwent surgery on 07.02.2013. Hence, her plea that she was pre-occupied in taking care of her husband's health and therefore, was not in a position to appear before the Court on the day on which the suit had been listed for hearing. She urged that she came to know of the decree only when she was served with the execution proceedings by the Additional District Court at Kumbakonam. On this plea, she wanted the delay to be condoned and the exparte decree to be set aside.



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7. The 1st respondent/plaintiff filed a detailed counter before the trial Court. He pointed out that no evidence had been produced before the Court to show that the petitioner's husband was taking treatment for heart ailment. He also pointed out that the petitioner had refused to receive a notice in the execution petition. The present petition was filed only after 14.07.2022, when with great difficulty that, the property of the 1st defendant was attached by the learned Additional District Judge at Kumbakonam. He pleaded since 30 days time as required under Article 123 of the Limitation Act was gone by, there was no merits in the application.

8. The learned Principal District Judge at Pondicherry considered the petition and counter and came to a conclusion that there is no sufficient cause to condone the delay and hence, dismissed the petition under Section 5 of the Limitation Act. Hence, this revision.

9. I heard Mr.S.Venkatesan for the civil revision petitioner and Mr.Samicannou, the party-in-person as the 1st respondent.



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10. A perusal of the record shows that the summons was never served on the 1st defendant. The notice that had been sent was returned and thereafter, publication had been effected and the 1st defendant had been set exparte. When Order V of the C.P.C. is adopted for the purpose of setting a person exparte, it is essential that prior to passing such an order, the bailiff ought to have been examined. Unfortunately, the said procedure had not been adopted in the present case.

11. With respect to the finding that no evidence had been produced regarding the heart ailment of the petitioner's husband, it is seen from the affidavit as well as the counter, the petitioner had produced a discharge summary of her husband from the Apollo hospital at Chennai. That being the situation, it points out that the husband was taking treatment at Apollo hospital at Chennai. When her husband is taking treatment in a hospital at Chennai, it would certainly not be possible to expect the wife to be attending to a Court in Pondicherry. If priority has to be gone into, the health of the husband obviously take priority more than the litigation that is launched against her. A practical approach has to be taken in the facts and circumstances of the case. Summons had not been served and secondly, the wife was also attending to her husband.



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12. Therefore, I am inclined to condone the delay on the following conditions:

(i) I.A.No.2161 of 2022 will stand allowed if the petitioner deposits the entire decree amount together with interest as on today (04.11.2024) and suit costs within a period of four weeks from today i.e. on or before 02.12.2024.

(ii) In case the entire decree amount together with interest and the suit costs are not deposited to the credit of the suit, this civil revision petition will stand dismissed without further notice to this Court.

(iii) In case the deposit has been made within the time granted by this Court, the learned Principal District Judge is requested to number the application filed under Order IX Rule 13 of the Code of Civil Procedure and allow the same.

(iv) The learned trial Judge shall grant 15 days time for the 1st defendant to file her written statement from the date of setting aside the exparte decree.

(v) In case the written statement is not filed, then the Court will be entitled to proceed further and pass judgment on the merits of the case.

(vi) If a written statement is filed within the time granted by this Court, the learned Principal District Judge is requested to dispose of the



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suit within a period of three months from the date of filing of the written statement.

(vii) If all the aforesaid conditions are complied and during the course of the trial, the learned Judge gets an impression that the 1st defendant is trying to drag on the matter, the learned Judge is at absolute liberty to reject any request for adjournment and proceed further in accordance with law.

13. With the above observations, the civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

The Principal District Judge, Pondicherry.



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V. LAKSHMINARAYANAN,J.

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