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C.R.P.(PD).No.788 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.788 of 2024

Kuppuraj Ramupillai

...

Petitioner

Vs.

Standard Chartered Bank,
Represented by its Branch Manager,
19, Rajaji Salai Branch,
Chennai 600 001.

...

Respondent

PRAYER: Civil Revision Petition filed under 115 of Civil Procedure Code against the order dated 01.11.2022 passed by the II Assistant City Civil Court, Chennai in I.A.No.1 of 2022 in O.S.No.4451 of 2020.

For Petitioner

: Mr.P.Sesubalan Raja

For Respondent

: Mr.P.S.Sashank

for R & P Partners

ORDER

This civil revision petition arises against the order dated 01.11.2022, passed in I.A.No.1 of 2022 in O.S. No.4451 of 2020 by the II Assistant City Civil Court, Chennai.



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2.O.S.No.4451 of 2020 is a suit filed by the civil revision petitioner seeking for recovery of a sum of Rs.3,80,539/- together with interest at 18% per annum till the date of realization. The details of the suit are irrelevant for the purpose of this case. Suffice to state an ex-parte decree was passed in the suit on 13.08.2021. Thereafter, the decree holder filed an application in E.P.No.4382 of 2021 seeking for recovery of the said amount. Notice was ordered in the proceedings to the defendant and notice was served in the execution proceedings for the hearing on 04.01.2022.

3.Due to the pandemic caused by Corona virus, the proceedings were adjourned from time to time and the matter was posted to 25.03.2022. On 25.03.2022, a counsel appeared for the defendant had filed his Vakalat. Hence, the matter stood adjourned to 21.06.2022 for filing of counter. It is at that stage, the defendant states it verified the A diary and came to know that the ex-parte came to be passed on 27.01.2021 for non filing of Vakalat. Therefore, a petition was filed on 20.04.2022 seeking to set aside the ex-parte decree dated 13.08.2021.



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4.The clear and specific plea that has been taken by the defendant is that the summons in the suit was not served on the defendant, which resulted in the ex-parte decree. This application was received as I.A.No.1 of 2022. The application was not accompanied with a petition under Section 5 of the Limitation Act on account of the fact the defendant pleaded that this application has been filed within 30 days from the date of knowledge. Notice was ordered to the plaintiff.

5.The plaintiff filed a detailed counter pointing out that the summons had been served on the defendant on 29.12.2021 and the Court Amin had filed the proof thereof on 30.12.2021. Further, the plaintiff pointed out that the defendant was set ex-parte after having given a sufficient opportunity on 11.02.2021 and finally an ex-parte decree came to be passed on 13.08.2021. Therefore, the plaintiff submitted that the entire affidavit is a deliberate lie uttered by the defendant only in order to prolong the matter as long as possible.



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6.The learned Trial Judge after hearing both sides, allowed the application to set aside the ex-parte decree in the interest of justice. The Court held the balance of convenience in his favour of the defendant as they have a good case on merits. Aggrieved by the same, the plaintiff has preferred this revision.

7.I heard Mr.P.Sesubalan Raja for the civil revision petitioner and Mr.P.S.Sashank for R & P Partners.

8.Mr.P.Sesubalan Raja points out that where a falsity is uttered by the defendant, he is not entitled to the benefits of setting aside the decree of ex-parte. Mr.P.S.Sashank argues that the entire proceeding took place when the country was reeling under the impact of Covid -19 virus and therefore, a liberal approach can be adopted in favour of the Bank.

9.I have carefully considered the submission of both sides.



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10.I have to agree with Mr.P.Sesubalan Raja that summons were served on the Bank on 29.12.2020. This is clear from the endorsement made by the defendant. The summons has been enclosed in page 26 of the typed set of papers. This is a certified copy of the summon. After receipt of the summon on 29.12.2020, the bailiff has also filed a report on 30.12.2020. This clearly and categorically shows that the defendant received the summon, but had uttered a lie deliberately in order to set aside the case ex-parte decree. Summon having been served on 29.12.2020, the defendant was aware about the proceedings initiated against it. That being the situation, it cannot plead that it came to know about the decree passed in the suit only when the proceedings were served in the execution proceedings. This is because the hearing date itself was on 04.01.2022. If the defendant had been served with the execution proceedings in December 2021, then limitation to file the application started running from that period, yet the defendant has disclosed lackadaisical attitude and did not file an application. Even when it filed an application in April 2022, it did not file



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the petition to condone the delay in filing the application to set aside the ex-parte decree.

11.The defendant is not an Indian company but a foreign establishment, which has sufficient man power and knowledge about the legal proceedings.

12.In the light of the above discussions, I should have interfere with the order and set aside the order setting aside the ex-parte decree. However, I have to take into consideration, the view expressed by the Supreme Court in *In re Article 142 of Constitution of India Covid - 19 Suo Motu W.P.(Civil) No.3 of 2020 dated 23.03.2020*. By virtue of the said judgment, the Supreme Court excluded the period of limitation from 15.03.2020 till 30.04.2022. The exclusion was on account of Covid -19 pandemic. In view of the declaration of the Supreme Court suspending the limitation Act as long as the Covid - 19 virus was existing in the society as a pandemic, I would take a lenient view in favour of the defendant. However, the Bank



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cannot be let scot-free after having uttered a lie before the Court. Therefore, I am inclined to impose a cost of Rs.10,000/- as a condition to set aside the ex-parte decree.

13.In the light of the above discussions, the civil revision petition is partly allowed. Impugned order is modified. The Order in I.A.No.1 of 2022 in O.S.No.4451 of 2020, dated 01.11.2022 is set aside. The respondent shall pay to the petitioner a sum of Rs.10,000/- as costs within a period of 4 weeks from the date of receipt of a copy of this order. It is made clear that in case the cost is not paid, the ex-parte decree will stand revived.

No costs.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

II Assistant City Civil Court,
Chennai.

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V.LAKSHMINARAYANAN,J.

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