



WEB COPY



C.R.P.(NPD) No.4481 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4481 of 2024
and C.M.P.No.25015 of 2024

K.S.Sankar

... Defendant/Petitioner

-VS-

S.Gopal

... Plaintiff/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the ex parte judgment and decree dated 08.11.2013 passed in O.S.No.76 of 2005 on the file of the Sub Court, Cheyyar and set aside the same.

For Petitioner : Mr.P.Mani

For Respondent : Mr.K.G.Senthil Kumar

ORDER

This Civil Revision Petition has been filed to set aside the *ex parte* decree passed on 08.11.2013 in O.S.No.76 of 2005. The said suit was filed for recovery of the loan amount of Rs.1,75,000/-, which was borrowed by the defendant, who is the own brother of the plaintiff on 13.09.2005.



C.R.P.(NPD) No.4481 of 2024

2. In the suit, despite several opportunities given to cross examine P.W.1, the defendant / revision petitioner herein had not chosen to cross examine P.W.1 and therefore, the suit had been decreed *ex parte* on the basis of the documents adduced on the side of the plaintiff. The said decree passed in the year 2013 had been challenged in the year 2024 on the ground that the decree and judgment is not in conformity with the provisions of Order XX Rule 4 & 5 of CPC.

3. Learned counsel for the petitioner submitted that the judgment and decree passed by the Court below is not in conformity with Order 20 Rule 4(2) and 5 of CPC, as no point for consideration has been framed and therefore, the judgment and decree is liable to be set aside. In support of his submission, he placed reliance on the judgments of this Court in the cases of 2011 (3) CTC 168 (Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.,), 2013 (2) CTC 388 (N.Maheswari vs. Mariappan and others) and 2015 (4) CTC 673 (G.Selvam and others vs. Kasthuri (deceased) and others).



C.R.P.(NPD) No.4481 of 2024

4. Learned counsel for the respondent contended that the revision petitioner had filed I.A.No.323 of 2015 to set aside the *ex parte* decree, which was allowed by the Trial Court with a condition to deposit a sum of Rs.1,00,000/-, against which, C.M.A.No.4 of 2016 filed by the revision petitioner was also dismissed. Challenging the order passed in C.M.A.No.4 of 2016, the revision petitioner had filed C.R.P.No.3697 of 2019 before this Court, which came to be dismissed on 25.08.2023 and therefore, the respondent herein objected to grant the relief in the present Civil Revision Petition.

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. Learned counsel for the petitioner has assailed the judgment and decree passed by the Court below, stating that it is a one line judgment and in fact, considering the document marked as Ex.A1 (said to be *pro note*) and the evidence of P.W.1, the Trial Court came to the conclusion that the claim has been proven and the decree has been passed. He has referred to



C.R.P.(NPD) No.4481 of 2024

the judgment of the Apex Court in the case of **Maya Devi vs. Lalta Prasad**, reported in **(2015) 5 SCC 588**, wherein, it was held that even in *ex parte* proceedings, mere absence of defendant does not absolve the Trial Court from fully satisfying itself on the factual and legal veracity of plaintiff's claim. He further cited a judgment of this Court in the case of **N.Maheswari vs. Mariappan and others (supra)** to plead that in terms of Order XX Rule 4 & 5 of CPC, a judgment and decree need not contain more than the points for determination and the decision thereon and on that ground, the judgment was set aside in that case.

7. There is no quarrel with the proposition laid down by the Supreme Court and this Court, inasmuch as even in an *ex parte* decree, there must be a reason to be given by the concerned Court. On perusal of the judgment and decree of the Trial Court impugned herein, the Trial Court has in fact considered the document Ex.A1 (pro note) and evidence. When P.W.1 was not cross examined, particularly when the document had been refuted and no rebuttal evidence has been given, statutory presumption will automatically apply.



C.R.P.(NPD) No.4481 of 2024

8. The revision petitioner has challenged the order after efflux of 11 years, which cannot be entertained. It is to be noted that this revision petition is nothing, but an attempt to somehow or the other protract the issue. It is relevant to point out that on earlier occasion, the revision petitioner had filed an application to set aside the *ex parte* decree and the said application was allowed on deposit of Rs.1,00,000/- and the CMA filed against the said order was dismissed and thereafter, the C.R.P.No.3697 of 2019 filed before this Court was also dismissed. In the said order, this Court, while disposing the CRP, extended the time for deposit till 03.11.2023 and after disposal of the CRP, the instant revision petition has been filed in the month of August, 2024. Considering the conduct of the revision petitioner, this Court is of the view that the judgment passed by the Trial Court does not warrant any interference by this Court.

9. At this juncture, it is brought to the notice of this Court that in the Execution Petition, the revision petitioner had already deposited a sum of Rs.62,000/-. When the petitioner had already paid some amount towards satisfaction of the decree, he cannot challenge the decree by way of



C.R.P.(NPD) No.4481 of 2024

N.SATHISH KUMAR,J.,

ar

WEB COPY

filing a Civil Revision Petition under Article 227 of the Constitution of India. Moreover, the decree has been passed only for Rs.1,70,000/- and the Trial Court had not ordered any interest. Hence, the revision petitioner is directed to deposit the decree amount without further delay.

10. With the above observation, this Civil Revision Petition is dismissed and the judgment and decree dated 08.11.2013 passed in O.S.No.76 of 2005 on the file of the Sub Court, Cheyyar is hereby upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
ar

To:

The Subordinate Judge,
Cheyyar.

C.R.P.(NPD) No.4481 of 2024