



C.R.P(MD)No.2260 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 26.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.2260 of 2022
and
C.M.P(MD).No.10614 of 2022**

Ramesh
Through his power agent
Muthusamy

... Petitioner

-Vs-

Ramasubbu

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside order passed in I.A.No.194/2020 in I.A.No.506/2016 in O.S.No.46 of 2006 dated 07.06.2022 on the file of the Subordinate Court, Kovilpatti.

For Petitioner : Mr.M.Sridharan
For Respondent : Mr.P.M.Vishnu Varathan.

ORDER

This revision petition is directed against the order dated 07.06.2022 passed in I.A.No.194 of 2020 in I.A.No.506 of 2016 in O.S.No.46 of 2006.



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2. O.S.No.46 of 2006 is filed for recovery of money. The case of the plaintiff is that the plaintiff and the defendant entered into an agreement of sale of the property belonging to the defendant. The plaintiff paid an advance amount of Rs.2,00,000/- and a written agreement dated 07.12.2005 was entered into. But, however, the defendant did not clear the encumbrance by redeeming the property from mortgage and also did not return the advance amount and hence, the suit.

3. In this suit, the defendant remained *ex-parte* and an *ex-parte* decree was passed on 09.03.2010 and thereafter, an application was filed in I.A.No.506 of 2016, in which the prayer was made to set aside the *ex-parte* decree along with condonation of 2129 days. The reason which was mentioned by the defendant was that subsequently he went abroad and was not residing in India and therefore, he could not take effective steps to defend the suit. In the course of the enquiry, the defendant also marked a copy of the passport, marking the relevant pages of the passport evidencing that he has actually traveled abroad. However, when the final orders were passed in I.A.No.506 of 2016, the trial Court without taking the same into consideration, simply dismissed the application for



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condonation of delay by holding that the defendant should have at least produced the copy of the passport to prove that he has gone abroad and disbelieving the defendant, the application was not allowed. Therefore, the present I.A.No.194 of 2020 was filed on the ground that originally photocopy of the passport was also produced during the enquiry. The trial Court, therefore, found that the earlier reasoning mentioned in the original order was incorrect and thereafter, allowed the application on payment of cost of Rs.2000/- by the order impugned in this civil revision petition.

4. The learned counsel for the petitioner/plaintiff impugning the order assailed in the civil revision petition would submit that while the trial Court is right in finding that a copy of the passport is filed, still the trial Court ought to have considered the petition on merits whether the defendant has gone abroad , if so on what date and whether there was any disability for him in contesting the suit. Without considering the merits of the matter, merely by realizing the mistake in the earlier order, the trial Court automatically allowed the review application and the main application and therefore, this Court should interfere.



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5. The learned counsel for the respondent would submit that both the plaintiff and the defendant are skilled workers working in foreign Nations to eke out the livelihood. Originally, the agreement was entered into with an understanding that the plaintiff was to shortly send the money of Rs. 2,00,000/- and the same was not mentioned in the agreement and therefore, an opportunity should be given to the defendant to contest the suit.

6. Considering all the attending circumstances of the case and the plea made by the defendant, the trial Court has allowed the application merely by ordering a cost of Rs.2000/-. The suit was filed in the year 2006. Therefore, at this stage, allowing the petition on the mere payment of cost would result in prejudice to the plaintiff. Therefore, this Court *prima facie* held a view that an opportunity can be granted provided the defendant deposits the principal amount of Rs.2,00,000/- to the credit of the suit and depending on the outcome of the suit on merits, the appropriate party either the plaintiff or the defendant can withdraw the same and adjourned the matter. Today, when the matter came up for hearing, the counsel appearing on behalf of the respondent/defendant would submit that his party is willing to deposit up to a sum of Rs. 2,00,000/- and contest the matter.



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7. In view thereof, the Civil Revision Petition is disposed of on the following terms:-

(i)The respondent /defendant shall deposit a sum of Rs.2,00,000/- on or before 31.08.2024 to the credit of O.S.No.46 of 2006. Upon such deposit, I.A.No.194 of 2020 and I.A.No.506 of 2016 shall stand allowed and *ex-parte* decree shall also be deemed to be set aside and the written statement filed by the petitioner shall be taken on file and the suit shall be proceeded on merits and in accordance with law.

(ii)If the above condition is not complied with, then I.A.No.194 of 2020 as well as I.A.No.506 of 2016 shall stand dismissed.

(iii)Since the suit is of the year 2006 and being now proceeded with, the trial Court is requested to consider taking of the same on preferential basis as expeditiously as possible.

No costs. Consequently, connected Miscellaneous Petition is closed.

26.07.2024

Index : Yes / No
Internet : Yes/ No
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D.BHARATHA CHAKRAVARTHY, J.

Rmk

To
1.The Subordinate Judge, Kovilpatti.

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