



C.R.P. (MD) No. 76 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 76 of 2023

and

C.M.P. (MD) No.350 of 2023

Mrs.Jothimani

... Petitioner/

Defendant

-VS-

Mr.V.Chinnasami

... Respondent/

Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.239 of 2020 in O.S.No.364 of 2017 dated 19.07.2022 on the file of the Principal Sub Court, Vedasandur, Dindigul District and set aside the same by allowing the civil revision petition.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondent : No appearance



WEB COPY



C.R.P. (MD) No. 76 of 2023

ORDER

This Civil Revision Petition is directed against the order dated 19.07.2022 passed by the Principal Subordinate Court, Vendasandur, in I.A.No. 239 of 2020 in O.S.No.364 of 2017. In the said the interlocutory application, The petitioner/defendant herein had prayed to set aside the *exparte* decree. The same is not allowed by the Trial Court, however, on condition to deposit fifty percent (50%) of the decree amount. Aggrieved by the said condition, the present Civil Revision Petition is filed.

2. Even though notice is served on the respondent/decree-holder, he had chosen not to appear before this Court.

3. Mr. Sarvagan Prabhu, the learned Counsel appearing on behalf of the petitioner would submit that the condition is onerous. When the defendant is seeking for an opportunity to contest the case on merits, directing the defendant to deposit 50% of the decree amount is an onerous condition and therefore, the same should be set aside. He would also further submit that after the *exparte* decree, an execution petition is also filed and in the execution petition, the salary of the petitioner is attached and a sum of Rs.15,000/- per month is being



deducted and the same would now be more than the 50% amount also. In view of the same, he would submit that this Court should pass appropriate orders modifying the condition.

4. I have considered the said submissions made by the learned Counsel for the petitioner and perused the material records of the case. On a perusal of the plaint, it can be seen that the plaintiff has pleaded that the defendant had borrowed a sum of Rs.7,00,000/- and executed the promissory note and hence the suit. The defendant has pleaded in the written statement that she does not even know the plaintiff and she never borrowed the amount. However, no specific pleadings in the written statement is taken about the signature contained in the promissory note. In that backdrop, the Court considers the issue. When an *ex parte* decree was passed on 18.02.2019, and the same is now set aside by the present order on 19.07.2022, considering the overall facts and circumstances of the case, if the Trial Court has ordered the deposit of 50% of the decree amount, the same cannot be termed as onerous. However, if certain sums are already being recovered from the petitioner in the execution petition in E.P.No.30 of 2020, the same can also be taken into account while considering the 50% decree amount.



WEB COPY

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

(i) The order of the Trial Court in I.A.No.239 of 2020 in O.S.No.364 of 2017, dated 19.07.2022 is upheld;

(ii) However, time is extended till 31.08.2024 to deposit the 50% of the decree amount;

(iii) The petitioner/defendant herein is entitled to adjust the amount already recovered from her salary in the execution petition if the amount already recovered exceeds the 50% of the decree amount, accordingly, a memo shall be filed before the Trial Court. The Trial Court shall verify and accept the same and accordingly, the *exparte* decree will stand set aside and the case will be taken up for merits.

(iv) After the adjustment of the amount already recovered, any balance sum is payable towards the amount, the same shall be deposited on or before 31.08.2024. If the amount is deposited, then the suit shall be taken up for consideration on merits and it can be disposed of by the Trial Court and if the amount is not deposited, the interlocutory



C.R.P. (MD) No. 76 of 2023

application shall stand dismissed and the plaintiff will be

entitled to proceed further with the execution petition.

6. The Civil Revision Petition is disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.07.2024

NCC : Yes/No

PKN

To

1. The Principal Sub Court, Vendasandur, Dindigul District.

2. The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



WEB COPY



C.R.P. (MD) No. 76 of 2023

D.BHARATHA CHAKRAVARTHY, J.

PKN

C.R.P. (MD) No. 76 of 2023

11.07.2024