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C.R.P.No.756 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.756 of 2022

Ekambaram

..Petitioner/Petitioner/Petitioner
/Petitioner/Plaintiff

Vs.

1.K.Kuppammal

2.K.Jothilakhmi

..Respondents/Respondents/Respondents
/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 16.04.2021 made in I.A.No.217 of 2020 in I.A.No.101 of 2020 in I.A.No.431 of 2019 in O.S.No.223 of 2016 dated 16.04.2021 on the file of the III Additional District Court, Salem.

For Petitioner : Mr.T.Shanmugam



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For Respondents : Mr.V.R.Anna Gandhi

ORDER

This Civil Revision Petition challenges the order passed by the learned III Additional District Judge at Salem in I.A.No.217 of 2020 in I.A.No.101 of 2020 in I.A.No.431 of 2019 in O.S.No.223 of 2016 dated 16.04.2021.

2. The revision petitioner is the plaintiff in the suit. The plaintiff claims that the husband of the first defendant, and the father of the second defendant, one Kandasamy, was well known to him. He alleges Kandasamy used to regularly borrow money from him. On 05.07.2014, the said Kandasamy approached the plaintiff for a sum of Rs.20,00,000/-. This amount, according to the plaintiff, was utilised by the defendants for altering the house in which they were residing. The plaintiff wanted the defendants to execute a promissory note for that amount before he disbursed the same. On 05.07.2014, the defendants executed promissory note for the aforesaid sum. They agreed to repay the said amount together



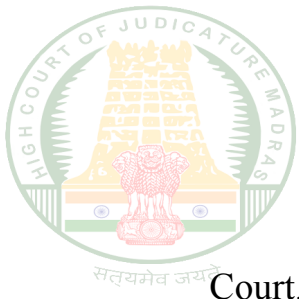
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with interest at the rate of 18% per annum [Rs.1.50/- for every 100 Rupees per month]. He pleaded that, despite repeated demands, as the defendants did not pay the amount, he was constrained to come forward with the present suit.

3. Summons were served on the defendants. The first and second defendants filed a common written statement. According to them, the relationship between the plaintiff and Kandasamy was with respect to the real estate dealings. Kandasamy used to identify the properties as a mediator and the plaintiff used to reap the benefit of such identification. However, the plaintiff never paid the commission charges to Kandasamy. According to them, this amount alone comes to Rs.91,00,000/-. Insofar as the suit promissory note is concerned, the defendants denied the execution of the same and therefore, they pleaded for dismissal of the suit.

4. Issues were framed and the suit was listed for trial. When it was posted for hearing on 17.07.2019, the plaintiff did not appear in the



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Court. Therefore, the III Additional District Judge was left with no other option than to dismiss the suit for default.

5. The plaintiff filed I.A.No.431 of 2019 to restore the suit and that application was listed for hearing on 01.10.2019. On that day, as notice of hearing could not be given, that application was dismissed for default. To restore that application, yet another application came to be filed in I.A.No.217 of 2020. The reason given in all the applications is that the plaintiff was suffering from viral fever and was taking treatment with a local Siddha Doctor. Notice was ordered in this application. Though the defendants were served, they did not enter appearance in the same.

6. The learned Judge took up the application for disposal. The Court came to a conclusion that the reason that given in the affidavit for treatment is unacceptable and consequently, dismissed the application. Challenging the same, the present revision.

7. I heard Mr.T.Shanmugam for the petitioner and Mr.V.R.Anna Gandhi for the respondents.



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8. Mr.T.Shanmugam, reiterated the contentions that were made before the trial Court. Mr.V.R.Anna Gandhi, pointed out that consistently the same reason has been given by the plaintiff and therefore, this Court should come to a conclusion that it is unacceptable. I have gone through the records and I have perused the same and I have applied my mind to the facts of the case.

9. Here is the case where the plaintiff has presented the suit for recovery of money on the foot of promissory note for a sum of Rs.20,00,000/-. The said document has been denied by the defendants. However, the defendants concede that there was pre-existing relationship between the plaintiff and the husband of the first defendant, and the father of the second defendant. The case of the plaintiff is that it is only on account of persuasion of Kandasamy that a sum of Rs.20,00,000/- was given as loan to the defendants. Whether these allegations are true or whether the promissory note is true and genuine or otherwise, is a matter which has to be gone into only at the time of trial. However, I take note of the fact that the plaintiff has approached the Court and sought for



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recovery of money. By delaying the said suit, the plaintiff is not going to gain anything.

10. The consideration that a Court should have for restoration of a suit dismissed for default must be fundamentally different from that of setting aside the *ex-parte* decree. When the Supreme Court has indicated that the Court should take liberal approach when it comes to setting aside the *ex-parte* decree, I feel, the same liberal approach should be extended even in this case where the plaintiff has come forward for restoration of the suit. By getting the suit dismissed for default, the plaintiff loses everything. Hence, this Court is of the opinion that the plaintiff should be permitted to prosecute the suit.

11. Medical reason can always be considered as sufficient cause for the purpose of restoration of a suit. It is true that the plaintiff has consistently given the same reason. He could not have produced the Medical Certificate, as he has specifically pleaded, that he had taken treatment from the local Siddha Doctor. Even if the Doctor had given a



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Certificate, there would have been an objection from the defendant on the ground that the Doctor is not a registered Medical Practitioner.

12. In order to balance the interests of both sides and give an opportunity to the plaintiff, I am inclined to restore the suit in O.S.No.223 of 2016 on the file of the III Additional District Judge, Salem, on the following conditions:

(i) the plaintiff will not be entitled to interest from 17.07.2019 till today.

(ii) the plaintiff shall pay a sum of Rs.50,000/- as costs to the defendants within a period of four weeks from today.

(iii) In case the payment is made, the suit will automatically stand restored. If costs are not paid, the benefit of this order will not enure in favour of the plaintiff.

(iv) If the plaintiff pays the costs within the time fixed, the learned III Additional District Judge is requested to restore



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the suit and proceed with the same and dispose of the suit within a period of nine months from the date of receipt of a copy of this order.

(v) The learned III Additional District Judge is requested to make an endorsement on the bundle that the plaintiff is not entitled to interest as stated above. This is to ensure that in case the suit is decreed, at the time of calculation of the amounts due, interest during this period will stand excluded.

13. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

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Index: Yes / No

Speaking Order : Yes / No

Neutral Citation: Yes / No

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To

The III Additional District Court, Salem.



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V.LAKSHMINARAYANAN, J.

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