

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present: **N.Renuga., B.A., B.L.,**
District Munsif, Sulur
Tuesday the 26th day of March 2024

EA.No.3/2023

in

E.P.No. 10/2022

in

O.S.No.324/2017

Rasu @ Paramasivam

... Petitioner/Judgment Debtor

/ Vs /

P.Eswaran

...Respondent/Decree Holder

This Petition is coming on 04.01.2024 this day for final hearing before me in the presence of Thiru.K.Karthikaivelan, Advocate for the Petitioner/JD and of Thiru.K.Shanmuganathan, Advocate for the Respondent/D.H, and on hearing submissions and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed under Order 21 Rule 105 and 106 and section 151 of CPC to set aside the exparte order in EP.No.10/2022 dated 21.08.2023.

1. The brief averments of the affidavit filed by the petitioner as follows:-

1.1. The E.P.No.10/2022 was posted for cross examination and the petitioner was appeared and due to non appearance of his counsel the petitioner was set exparte in the said execution petition on 23.02.2023. Subsequently the petitioner filed the application in EA.No.1/2023 to set aside the exparte order against the petitioner and the same is allowed on 14.07.2023. Subsequently against the matter stood posted for cross of PW.1 on 21.08.2023 on that day also the petitioner was present and on the same day 3.30 pm no representation from his side. Hence, exparte order passed against the petitioner and the case is posted for orders on 23.08.2023.

1.2. Due to petitioner's ill health he was not followed the above execution petition, due to which this Hon'ble court ordered to arrest against the petitioner on

30.08.2023. The petitioner's earlier counsel did not give proper instructions to conduct the case further.

1.3. The petitioner clarified the above matter with his present advocate, he telling that already the said suit has been decreed on 26.10.2017 itself. But the respondent illegally and unlawfully with a malafide intention to grab the suit B schedule property from petitioner filed the above vexatious suit against petitioner. Hence, the petitioner come forward with the present application to set aside the exparte order passed against the petitioner on 21.08.2023.

2. The brief averments of the counter filed by the Respondent as follows:

2.1. The petition is false, frivolous, vexatious and not maintainable both in law and on the facts of the case. In the said suit, the petitioner and his deceased father were parties to the proceedings. They entered appearance through their counsel. Therefore, they were well aware of the proceedings. The petitioner cannot have right to say that he was not aware of the proceedings. This respondent already submitted necessary records before this Hon'ble court to show that the petitioner has got knowledge about the pendency of the case before Coimbatore court and then transfer to the Hon'ble court and decree passed by the learned predecessor as against the petitioner.

2.2. The petitioner has come forward with the present application to set aside the exparte order passed against the petitioner on 21.08.2023 are all totally, false untenable and the petitioner is put to strict proof of the same. The knowledge alleged to have been pleaded by the petitioner in the above affidavit is false. The petitioner is fully aware of the proceedings and he was all along even then he is making such false averments in the affidavit in order to cover up his lethargic attitude in the court proceedings. Therefore, application filed by the petitioner is nothing but abuse process of law.

2.3. The respondent being a coolie, even after getting decree, he could not enjoy the fruits of the judgment. Hence, by believing the proceedings of the court and temple of justice, he initiated the above execution proceedings. In order to stall

the same after the laps of six years, knowing fully about the pendency of the case and decree, the petitioner has come forward with this application as if he was in dark after getting knowledge from fresh counsel and he was aware of the entire facts. This itself shows the attitude and tendency of the petitioner that he may go to any extent to lie and postpone the proceedings initiated by this respondent. Hence, the petition ought to be dismissed.

3. Point for Consideration:-

Whether the petition filed under 21 Rule 105 and 106 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard learned counsel for both side. The petitioner is the respondent in the main EP which is filed against him for arrest for disobedience of permanent injunction decree. On perusal of records the EP filed on 21.04.2022 and the petitioner/respondent/JD appeared in person before this court on 04.07.2022. After that, he engaged counsel on his own and filed his counter on 29.02.2022. After that, this case is posted for enquiry and the petitioner/decreed holder filed proof affidavit and examined himself as PW.1.

4.2. Further on repeated opportunity the petitioner/respondent/JD has not appeared for cross examining the PW.1 and he was set exparte on 20.02.2023. Further the petitioner/ respondent/JD filed 1st petition under order 21 rule 105 of CPC to set aside the exparte order passed against him and the same in EA.No.1/2023 has been allowed on cost and the exparte order has been set aside, this case posted for cross examination of PW.1 on 25.07.2023. Further the petitioner/respondent/JD has not present on subsequent hearings and on 21.08.2023 this petitioner/2nd respondent present and he has not choosen to cross examine on 21.08.2023 he set exparte for non appearance after passed over the matter at 3.00 p.m,. Further on enquiry this court passed order of arrest on of petitioner/respondent/JD 30.08.2023. Further the petitioner/respondent/JD arrested and produced before this court on 08.09.2023 and after receiving the Mutchalikka for regular appearance the Judgment Debtor released.

Further on 22.09.2023, the petitioner/respondent present before this court along with this 2nd application to set aside the exparte order passed against him on 21.08.2023.

4.3. On perusal of affidavit filed by the petitioner/respondent he stated reason for his non appearance, was his earlier counsel has not given proper instructions to conduct the case. On perusal of records the petitioner/judgment debtor had appeared frequently and his presence has been noted by this court. This EP filed for disobedience for permanent injunction order, already the similar application has been allowed, further considering the nature of suit and in the interest of justice this court inclined to allow this application on heavy cost.

In the result, this petition will be allowed on payment of cost of Rs.5000/- to be paid by the Petitioner/Judgment debtor to the Respondent/Decree holder on or before 12.04.2024. On failure this petition stands dismissed automatically. For compliance Call on 12.04.2024.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 26th day of March 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on petitioner side:-

Nil

List of documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

12.04.2024

This Petition is coming again on this day for final hearing before me in the presence of Thiru.K.Karthikaivelan, Advocate for the Petitioner/JD and of Thiru.K.Shanmuganathan, Advocate for the Respondent/D.H, and on hearing submissions and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Till 4.45 pm no representation by petitioner side cost not paid. Hence, this petition is dismissed.

Pronounced by me in open court this the 12th day of April 2024.

Sd/N.Renuga

District Munsif,
Sulur.

Draft/ Fair Order
EA.No.3/2023 in
E.P.No.10/2022 in
O.S.No.324/2017
Dated : 12.04.2024
DMC, Sulur.