

In the Court of the Subordinate Judge, Virudhunagar.
Present : Thiru. R. Sathish, M.L.,
Subordinate Judge, Virudhunagar.
Monday, the 11th day of April 2022.

E.A . No. 1 of 2021
in
E.P.32 of 2020
in
O.S. No. 120 of 2019
(CNR No .. TNVR09 000253 2020)

Marimuthu. .. Petitioner/Respondent/Defendant.

/vs/

Jeyam. .. Respondent/Petitioner/Plaintiff.

This Petition came before this Court for the final hearing on 11.04.2022, in the presence of Thiru.S.Elangovan, Advocate for the petitioner and Thiru. M.Subburam, Advocate for the respondent and upon hearing the Petitioner's side and on perusing the documents and evidence and having stood over for consideration till this date and today this Court delivers the following:-

ORDER

Petition filed by the Petitioner/Respondent/Defendant under Order 21 Rule 106 and Section 151 CPC to set aside the exparte Order passed against him on 15.03.2021.

2. Petition in brief :-

The petitioner is the defendant in the suit and has filed petition to set aside the exparte order passed against him on 15.03.2021. The reason stated by the petitioner is that prior to 15.03.2021 he had severe fever and was under treatment and he could not instruct his counsel hence he was called absent and set exparte. Further the case was listed on 23.03.2021, 21.04.2021, 23.04.2021 and on 30.06.2021 the suit property was

ordered for auction and sale. Hence at this juncture the present petition to set aside the exparte order has to be allowed so as to put forth the present case.

3. Counter in brief :-

The respondent has denied the averments stated in the petition and the petitioner has deliberately given wrong address in the petition. The petitioner has resided in Door No.167, Old Aruppukottai Road and the summons were also served in the above address and the petitioner is working in TNSTC. In the official documents he has given the address stated as 167, Old Aruppukottai Road, Virudhunagar and the petitioner with an intent to drag on the case proceedings has given a wrong address. The respondent has denied that the petitioner was having severe fever at the time when the case was listed. The petitioner is working in TNSTC and the respondent has obtained particulars under Right to Information Act from Madurai Division Office of TamilNadu State Transport Corporation where the petitioner has worked during the period of January 2021 to March 2021 for 3 months without any absence. If the petitioner had severe fever he would not have gone for his work and hence suppressing the facts has falsely stating that he had fever. The petitioner is having a lot of case relating to money transactions and in O.S.7/2016, E.P.14/2018, O.S.67/2019 & O.S.21/2019 decree has been passed against the petitioner and in all the four cases the petitioner has remained exparte. The petitioner deliberately with an intent to deceive the respondent is acting and belatedly is in the habit setting aside the exparte order passed against him. The above act of the petitioner shows that he is dragging on the case proceedings. Hence the respondent has prayed to dismiss the present petition with exemplary costs.

4. No oral evidence for both the sides. No documentary evidence for petitioner side. Ex.R1 marked on the side of the respondent.

5. Heard both sides. Records perused.

6. On going through the rival submissions on either side, it is seen that the petitioner has come forward with the present petition to set aside the exparte order passed against him on 15.03.2021 and the reason stated by him is that he had severe fever at the time when the case was listed for trial.

The respondent on the other hand would contend that the petitioner is in the habit of deceiving the people and he has number of cases relating to money transactions. The respondent deliberately left the case to go exparte and belatedly he has filed the present petition with false allegations. The respondent would contend that in the month of January to March 2021 the petitioner has not availed leave and the same could be witnessed through his employer at Madurai through particulars that has been obtained under Right to Information Act as per Ex.R1. A go through of Ex.R1 would go to show that the petitioner has not availed leave during the period of January 2021 to March 2021.

The respondent advanced his arguments on the basis that if the petitioner is not doing well as per the averments stated in the petition he should not have reported to office and should have taken treatment but he has not done so. Hence the respondent would contend that the stand of the petitioner that he was ill and he could not instruct his counsel are all false and just invented for the sake of filing the present petition. A go through of the records and petition averments would put forth the fact that the petitioner has not availed any leave. Further as rightly argued by the respondent if the petitioner was ill he would have availed leave and would have taken treatment. Hence the reason assigned by the petitioner that he was ill and on that ground the exparte order passed against him is to be set aside is not sustainable.

The respondent would also contend that if the petitioner fails to produce medical certificate in support of his ailment, on that ground also the petition has to be

dismissed. The respondent relied upon the dictum reported in 2014(2) MWN (Civil) 74 & 2014(2) MWN (Civil) 586 (Mad) in support of his contention. Admittedly the petitioner has not produced any medical certificate to put forth his ailment whereas the respondent has put forth that the petitioner without availing any leave due to illness has reported to duty.

The respondent would contend that after service of notice in the Execution Petition the respondent should come forward with the set aside petition but without doing so the petitioner has belatedly filed set aside petition. The respondent has placed reliance upon the dictum reported in 2021 (2) MWN (Civil) 302. A go through of the case records would reveal the fact that the petitioner herein has been served in the Execution Petition and he remained exparte in it. Thereafter when the attachment has been made and the property is about to be sold out the present petition has been filed. The respondent would contend that the petitioner is in the habit of remaining exparte and thereafter has belatedly has come forward with the present petition.

Admittedly in the case on hand the petitioner herein has remained exparte and the property was brought for sale after attachment, at this juncture the petitioner has come forward with the present petition. The petitioner has not come forward with the present petition soon after receipt of notice in the Execution Petition. The above dictum applies to the case on hand. The person who seeks to set aside the exparte order passed against him should give sufficient cause for setting aside the same. Though the petitioner has stated that due to ill health he could not appear on the date and he was set exparte, but no documentary evidence has been produced in support of the same.

Moreover the respondent having produced the documents to show that the

petitioner has not availed any leave on medical grounds for 3 months starting from January to March 2021 and as such has put forth that the reason assigned by the petitioner is not correct. Hence the present petition is devoid of merits. Further setting aside exparte order cannot be allowed in a casual manner and there should be sufficient cause. The petitioner failing to put forth sufficient cause and as such the petition deserves to be dismissed.

For the reasons stated above and in the interest of justice the present petition is to be dismissed.

In the result, petition is dismissed. No costs.

Dictated by me to the Steno Typist, transcribed and typed by her, corrected and pronounced by me in Open Court, on this the 11th Day of April 2022.

Subordinate Judge,
Virudhunagar.

Both Sides Witnesses :-

Nil.

Petitioner Side Documents :-

Nil

Respondent Side Documents :-

Ex.R1 .. Right to Information Act particulars received
from TamilNadu State Transport Corporation,
Madurai dated 16.08.2021.

Subordinate Judge,
Virudhunagar.

Subordinate Court, Virudhunagar.

E.A . No. 1 of 2021

in

E.P. No. 32 of 2020

in

O.S.No.120 of 2019

Fair/Draft Orders

11.04.2022
