



C.R.P.(MD) No.2087 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2087 of 2022

and

C.M.P(MD) No.9591 of 2022

M.Sengamalai

... Petitioner

Vs.

1.Rajendran

2.Sathyadevi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.06.2022 made in I.A.No.1 of 2021 in O.S.No.376 of 2016 on the file of the Subordinate Court, Melur.

For Petitioner : Mr.G.Sridharan

For Respondents : No appearance

ORDER

Though notice was served on the respondents, there is no representation on the side of the respondents.



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2. This Civil Revision Petition is filed to set aside the fair and decreetal order dated 24.06.2022 passed by the Subordinate Court, Melur in I.A.No.1 of 2021 in O.S.No.376 of 2016.

3. The petitioner is the plaintiff in O.S.NO.376 of 2016 on the file of the Sub Court, Melur. The said suit was filed by the petitioner/plaintiff for a specific performance of Sale Agreement. The respondents/defendants remained *exparte* and therefore *exparte* decree was passed on 21.12.2016 in O.S.No.376 of 2016. The respondents/defendants filed I.A.No.1 of 2021 in O.S.No.376 of 2016 under Section 5 of the Limitation Act, to condone the delay of 942 days in filing the application to set aside the *exparte* decree.

4. According to the respondents/defendants before the Trial Court in I.A.No.1 of 2021 in O.S.No.376 of 2016, due to the loss in their business, they left the village and moved to Chennai and other places. Hence, the respondents/defendants could not contact the counsel and were not aware of the hearing dates of the suit and were set *exparte* for non-filing of Written Statement on 21.12.2016.



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5. According to the respondents/defendants, non appearance of the respondents/defendants is neither wilful nor wanton and hence prayed for condoning the delay of 942 days in filing the petition to set aside the *exparte* decree in I.A.No.1 of 2021.

6. The claim of the respondents/defendants was resisted by the petitioner/plaintiff in the counter affidavit filed in I.A.No.1 of 2021 in O.S.No. 376 of 2016 stating that the I.A. was not maintainable either in law or on facts and that the respondents/defendants have suppressed many material facts and the reasons given by the respondents/defendants were not genuine and not acceptable and therefore, the same cannot be accepted.

7. However, the Trial Court, after considering the averments made in the affidavit and in the counter affidavit and arguments advanced on both sides, allowed I.A.No.1 of 2021 in O.S.No.376 of 2016 *vide* impugned order dated 24.06.2022 on payment of cost of Rs.10,000/- to the petitioner/plaintiff by the respondents/defendants, against which, the present Civil Revision Petition is preferred.



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8. The learned counsel appearing for the petitioner/plaintiff would submit that the respondents/defendants were continuously negligent and the delay was condoned by the Trial Court on the ground of sympathy on the respondents/defendants. According the learned counsel appearing for the petitioner/plaintiff, the respondents/defendants have not produced any material evidence to show the sufficient cause for non-appearance and for the delay in filing the petition to set aside the *exparte* decree dated 21.12.2016.

9. To support of his contention, the learned counsel appearing for the petitioner/plaintiff relied upon the following decisions:-

- i. **Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and others**, (2013) 12 SCC 649.
- ii. **Tamil Radhasoami Satsang Assn. rep. by Madras Branch Secretary Vs. Sports Development Authority of Tamil Nadu, rep. by Member Secretary**, 2022 (1) MWN (Civil) 683.

10. Principles laid by the Hon'ble Supreme Court in **Esha Bhattachargee** case referred to *supra*, are that there must be *bona fides* on the part of the party seeking condonation of delay and the Court, while condoning



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the delay, should consider the conduct, behavior and attitude of a party relating to its inaction or negligence which are the relevant factors. The above decision of the Hon'ble Supreme Court in **Esha Bhattachargee** case referred to *supra*, has been followed by the Madras High Court (Principal Seat of this Court), Chennai in **Tamil Radhasoami Satsang Assn.** case referred to *supra*.

11. Heard the learned counsel for the petitioner/plaintiff and perused the materials available on record. Though notice was served on the respondents/defendants, they remained *exparte*.

12. From the materials available on record, it is seen that the petitioner/plaintiff has filed suit in O.S.No.376 of 2016 for a specific performance and *exparte* decree was passed on 21.12.2016. The said *exparte* decree dated 21.12.2016 was set aside by the Trial Court *vide* impugned order dated 24.06.2022 in I.A.No.1 of 2021 in O.S.No.376 of 2016.

13. According to the respondents/defendants, due to the loss in their business, they moved to Chennai for their better avocation and they could not appear before the Court on the hearing dates and they came to know about the *exparte* decree dated 21.12.2016 passed in O.S.No.376 of 2016 only after the



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receipt of the notice of Execution Proceedings. However, on perusal of the records, it is noticed that though on 07.12.2018, the counsel for the respondents/defendants has filed vakalat and the case was adjourned to 18.01.2019 for filing counter affidavit of the respondents/defendants in Execution Proceedings, the application in I.A.No.1 of 2021 in O.S.No.376 of 2016 for condonation of delay in filing the application to set aside the *exparte* decree, was filed by the respondents/defendants only on 23.07.2019.

14. Thus, the attempt of the respondents/defendants lacks *bona fides* as at the point of time when they appeared through counsel in the Execution Proceedings after receipt of notice, the respondents/defendants have not taken any steps to file application for setting aside the *exparte* decree passed against them.

15. It is clear that the respondents/defendants failed to take steps even after knowing about the *exparte* decree when they received the notice in the Execution Petition. Apart from that, the respondents/defendants have not given any sufficient reasons to condone the delay in filing the application to set aside the *exparte* decree.



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16. It is submitted by the learned counsel appearing for the petitioner/plaintiff that in the E.P., draft and fair Sale Deeds were made ready and at that stage, the I.A. was allowed by the Trial Court causing great hardship to the petitioner/plaintiff. It is further submitted that major part of the sale consideration has been received by the respondents/defendants at the time of execution of Sale Agreement and only a meagre amount of Rs.10,000/- is pending to be paid by the petitioner/plaintiff to the respondents/defendants. That apart, the reasons given by the respondents/defendants for the delay are not acceptable. The Trial Court has erroneously allowed the I.A. on ground of sympathy.

17. For the above reasons, the impugned order dated 24.06.2022 passed by the Trial Court in I.A.No.1 of 2021 in O.S.No.376 of 2016 is liable to be set aside and is hereby set aside.

18. Accordingly, this Civil Revision Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

06.07.2023

NCC :Yes/No
Internet: Yes/No
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K.GOVINDARAJAN THILAKAVADI, J.

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To

The Sub Court,
Sattur.

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and
C.M.P(MD) No.9591 of 2022

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