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C.R.P.(MD) No.336 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.11.2024
Pronounced on	07.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.336 of 2022
and
C.M.P.(MD) No.1448 of 2022

Sethupathi
S/o.Malaichamy

... Petitioner

Vs.

Marunthayi
W/o.Late.Ramachandran

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 12.11.2021 made in I.A.No.1 of 2019 in O.S.No.26 of 2015 on the file of the Subordinate Judge, Sivagangai.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.PT.S.Narendravasan

ORDER

This Civil Revision Petition has been filed by the plaintiff in O.S.No.26 of 2015 on the file of the Subordinate Court, Sivagangai,



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challenging the fair and decreetal order dated 12.11.2021 passed in I.A.No.1 of 2019 in O.S.No.26 of 2015. The respondent is the defendant in the above suit.

2. The revision petitioner, as plaintiff, filed the above suit in O.S.No.26 of 2015 for the relief of specific performance. Since the respondent/defendant remained *ex parte*, an *ex parte* decree was passed against her on 07.08.2015.

3. Thereafter, the respondent/defendant filed an application in I.A.No.1 of 2019 for condonation of delay of 777 days in filing the application for setting aside the *ex parte* decree dated 07.08.2015 passed against her. The trial court, applying the principles laid down by this Court in the judgment in ***Chandra and others v. M. Devendran***, reported in **2019 (4) CTC 61**, allowed the said application, subject to the respondent/defendant paying a sum of Rs.2,71,000/- to the revision petitioner/plaintiff, which is the cost incurred by the revision petitioner/plaintiff for registering the sale deed, within a period of one month.



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WEB COPY 4. Aggrieved by this order, the plaintiff has filed this revision petition.

5. Mr.G.Prabhu Rajadurai, the learned counsel for the revision petitioner/plaintiff, submits that there was an Agreement between the revision petitioner/plaintiff and the respondent/defendant, as per which, the respondent/defendant agreed to sell his property in favour of the revision petitioner/plaintiff and the respondent/defendant also received a sum of Rs.4,00,000/- as advance at the time of execution of the said Agreement; that thereafter, the respondent/defendant failed to execute the Sale Deed in favour of the revision petitioner/plaintiff and hence, the revision petitioner/plaintiff was constrained to file the above suit for specific performance; that since the respondent/defendant neither filed written statement nor appeared before the trial court, the trial court, on 07.08.2015, passed an *ex parte* decree in favour of the revision petitioner/plaintiff; that thereafter, an execution petition was filed by the revision petitioner/plaintiff, which was allowed by the trial court; and that the Sale Deed was also executed through the Court in favour of the revision petitioner/plaintiff, which was registered before the Sub



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Registrar, Madagupatti, for which, the revision petitioner/plaintiff spent a sum of Rs.1,72,000/- for stamp duty.

6. He further submits that after execution of the Sale Deed, i.e., after a lapse of 777 days, the respondent/defendant filed the application under Section 5 of the Limitation Act for condonation of delay in filing the application for setting aside the *ex parte* decree and that the trial court, without taking into account that no satisfactory explanation has been attributed by the respondent/defendant for the delay of 777 days in filing the application for setting aside the *ex parte* decree and without assigning any valid reasons to condone the enormous delay, allowed the application for condonation of delay.

7. On the other hand, Mr.PT.S.Narendravasan, the learned counsel for the respondent/defendant, submits that during the pendency of the suit, the husband of the respondent/defendant died and further, the respondent's/defendant's leg was injured, and therefore, she was unable to attend the court during the trial; that the trial court having found the explanation given by the respondent/defendant to be sufficient allowed the condone delay application by passing a conditional order directing the



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respondent/defendant to pay a sum of Rs.2,71,000/- to the revision petitioner/plaintiff; that pursuant to the said order, the respondent/defendant has deposited Rs.2,71,000/- to the credit of the suit and the same is also admitted on the side of the revision petitioner/plaintiff.

8. The learned counsel for the respondent/defendant further submits that the respondent/defendant has also filed the written statement, in which it is clearly stated that the said Agreement was executed only for a loan transaction and the respondent/defendant never intended to sell the suit properties in favour of the revision petitioner/plaintiff. He, even on merit, submits that the respondent/defendant has a valid defence to succeed.

9. Heard on both sides. Records perused.

10. Admittedly, the revision petitioner/plaintiff has filed the above suit for specific performance; since the respondent/defendant has neither filed written statement nor appeared before the trial court, an *ex parte* decree was passed against her; thus, the respondent/defendant has filed an



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application in I.A.No.1 of 2019 for condonation of delay of 777 days in filing the application for setting aside the *ex parte* decree; the trial court allowed the said application by directing the respondent/defendant to pay Rs.2,71,000/- which was spent by the revision petitioner/plaintiff for execution of Sale Deed in his favour by virtue of the *ex parte* decree; and the respondent/defendant has paid the same and filed the written statement.

11. Order IX, Rule 13 of the CPC provides a legally framed procedure for setting aside an *ex parte* decree, where the defendant can apply to the court to have the decree set aside if they can demonstrate valid reasons for their non-appearance. Therefore, the burden of proof lies on the defendant to show that their non-appearance was not due to negligence but was caused by justifiable reasons.

12. In this case, the respondent/defendant has given sufficient reasons for her non-appearance at the time of trial. According to the respondent/defendant, since she has lost her husband and was suffering from ailments, she was unable to attend the court during the trial. The respondent/defendant has clearly demonstrated that she had a valid reason



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for not appearing before the trial court during the trial. In the impugned order, the trial court has also considered that the reasons attributed by the respondent/defendant are sufficient to condone the delay of 777 days.

13. Moreover, to meet the ends of justice, the trial court directed the respondent/defendant to pay a sum of Rs.2,71,000/- to the revision petitioner/plaintiff, which is the cost incurred by the revision petitioner/plaintiff for registering the Sale Deed. Furthermore, the specific contention of the respondent/defendant is that she never intended to sell her properties to the revision petitioner/plaintiff and that the Agreement was only in pursuant to a loan transaction. Therefore, in the interest of justice, an opportunity must be given to the respondent/defendant to put forth her contention.

14. Therefore, no infirmity or perversity is found in the impugned order, which calls for any interference. Considering that the suit was filed in 2015, the trial court is directed to dispose of the suit expeditiously, without granting unnecessary adjournments, and by providing sufficient opportunities to the parties to put forth their contentions, but not later than six months from the date of receipt of a copy of this order.



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WEB COPY 15. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

07.11.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

The Subordinate Judge,
Sivagangai,
Sivagangai District.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made
in
C.R.P.(MD) No.336 of 2022
and
C.M.P.(MD) No.1448 of 2022

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