



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P. (NPD) (MD) Nos.106, 107 and 253 of 2013
and
M.P. (MD) Nos.1,1,1, and 2 of 2013

1.Thankaswamy
2.Kala

: Petitioners in all petitions

Vs.

Mary Vasantha

: Respondent in all petitions

Prayer: Civil Revision Petitions are filed under Section 115 of the Code of Civil Procedure, to call for the records in E.A.Nos.48, 49 of 2012 in E.P.No.13 of 2012 in O.S.No.90 of 2007 and I.A.No.102 of 2012 in O.S.No.90 of 2007 respectively on the file of the Subordinate Judge, Padmanabhapuram, Kanyakumari District and set aside the same.

For Petitioners : Mr.F.Deepak
For Respondent : Mr.R.Russel Raj

ORDER

The respondent filed a suit against the petitioners in O.S.No.90 of 2007 before the learned Subordinate Judge, Padmanabhapuram. It was a suit for specific performance. The petitioners filed written statement and contested the suit. The first petitioner herein filed a written statement denying the execution of sale agreement.

2.The petitioners failed to appear before the trial Court after filing written statement. The trial Court therefore passed an exparte decree on 06 January 2009.

3.The respondent filed E.P.No.13 of 2010 to execute the decree. While so, the petitioners filed an application I.A.No.102 of 2012 to condone the delay in filing the application to set aside the exparte decree. There was a delay of 1018 days in filing the said application. The learned Judge dismissed the application. The said order is under challenge in C.R.P.No.153 of 2013.

4.Before the executing Court, the respondent filed applications in E.A.Nos.48 and 49 of 2012, to amend the plaint and decree in O.S.No.90 of 2007. The learned executing Judge allowed those applications. The order dated 26 July 2012 in the respective execution applications are challenged in C.R.P.Nos.106 and 107 of 2013.

5.Heard the learned counsel for the petitioners and the learned
<https://hcservices.ecourts.gov.in/hcservices/>
counsel for the respondent.

6. There is no dispute that the petitioners filed written statement in O.S.No.90 of 2007 disputing the claim made by the respondent. It is also a matter of record that the petitioners failed to appear before the Court after filing written statement. Since, it is a suit for specific performance, the learned trial Judge was expected to consider the sale agreement and the pleadings and for arriving at a conclusion as to whether the respondent is entitled to a discretionary remedy. The learned trial Judge granted a decree in favour of the respondent without considering the merits of the matter. The judgment and decree in O.S.No.90 of 2007 does not contain any indication that the Court has considered the merits of the matter.

7. Since the respondent has no objection in setting aside the exparte decree and the proceedings taken thereafter, I am of the view that the matter requires fresh consideration by the learned trial Judge.

8. In the result, the decree dated 06 January 2009 in O.S.No.90 of 2007 is set aside. The execution petition in E.P.No.13 of 2012 is struck off from file.

9. The learned trial Judge is directed to dispose of the suit in O.S.No.90 of 2007 on merits and as per law as expeditiously as possible and in any case, within a period of four months from the date of receipt of a copy of this order.

10. The civil revision petitions are disposed of with above direction. No costs. Consequently, connected M.P.(MD) Nos.1,1,1 and 2 of 2015 are closed.

Arul

Sd/-

Assistant Registrar[Per Admn]

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge, Padmanabhapuarm.

+1 cc to Mr.R.Russel Raj, Advocate SR.No.37140.

Order made in
C.R.P.(NPD)(MD)Nos.106, 107 and 253 of 2013
and
M.P.(MD) Nos.1,1,1, and 2 of 2013

Dated:08.07.2015

2P/3C

RPB/PSK(B) 29.07.2015