

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.NPD.No.117 of 2011

and

M.P.No.1 of 2011

1. Patchaiammalle
2. Gnanakrishnan
3. Pazhanivel @ Shankar
4. Amudha Lakshmi
5. Jothy Lakshmi
6. Gurukumaran @ Ravi

... Petitioners

- Vs -

1. Shakthivel
2. Poorani

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 20.09.2010 and made in I.A.No.2719 of 2009 in O.S.No.263 of 2008 on the file of the learned III Additional District Munsif, Pondicherry.

For Petitioners	: Mr.T.S.Baskaran
	For Mrs.Chitra Sampath
For Respondents	: Mrs.V.Srimathi

ORDER

The fair and decreetal order dated 20.09.2010 and made in the application in I.A.No.2719 of 2009 in the suit in O.S.No.263 of 2008 on the file

of the learned III Additional District Munsif, Pondicherry are under challenge in this revision.

2. The revision petitioners are the defendants 1, 2, 4 to 7 in the suit whereas the 1st respondent herein is the plaintiff and the 2nd respondent is the 3rd defendant. Since the 3rd defendant Poorani has not joined with the revision petitioners, she has been arrayed as 2nd respondent in the revision petition.

3. It is manifested from the records that the 1st respondent had filed a suit in O.S.No.263 of 2008 on the file of the learned III Additional District Munsif, Pondicherry as against the revision petitioners as well as the 2nd respondent herein seeking the relief of a direction directing the defendants to execute a sale deed in respect of the suit schedule property and in default, order execution of sale deed by the Court in favour of the plaintiff.

4. It is revealed that the revision petitioners had not chosen to file written statement at the initial stage and therefore, they were called absent and set exparte on 04.11.2008. Thereafter, on 06.07.2009, after the examination of the 1st respondent/plaintiff as PW1, the trial court had proceeded to pass an exparte decree, directing the 1st respondent/plaintiff to deposit the balance of sale consideration within one month. This order was

complied with by the 1st respondent and accordingly, the balance of sale consideration was deposited on 05.08.2009.

5. Since the trial court had passed an exparte decree on 06.07.2009, the revision petitioners being the defendants 1,2,4 to 7 had come forward with an application in I.A.No.2719 of 2009 under Section 5 of the Limitation Act to condone the delay of 110 days in filing the application under Order 9 Rule 13 C.P.C. to set aside the exparte decree dated 06.07.2009. This petition was strenuously contested by the 1st respondent/plaintiff and after hearing both sides, the learned Trial Judge had proceeded to dismiss the application on 20.09.2010 only on the ground that the revision petitioners had appeared before this Court through an advocate on 16.04.2008. However, they had not chosen to file their written statement till 04.11.2008, despite several chances were given to them. Ultimately, they had filed the above said application only on 23.11.2009. Even along with the said petition for condoning the delay, the revision petitioners had not chosen to file their written statement. Therefore, only on this ground, the trial court had proceeded to dismiss the application.

6. Mr.T.S.Baskaran, learned counsel appearing for M/s.Chitra Sampath has drawn the attention of this Court in paragraph No.2 of the affidavit filed by the revision petitioner, wherein at the bottom four lines they have stated that

" we have also filed written statement to the suit filed by the 1st respondent and the written statement is enclosed along with the present application."

According to Mr.T.S.Baskaran, along with the application, the revision petitioners had also filed their written statement but ignoring this fact, the trial court had proceeded to say that the revision petitioner had not chosen to file the written statement along with the petition. However, he would state further, the suit was filed by the 1st respondent/plaintiff based on agreement of the sale dated 28.04.2004. An exparte order as against the revision petitioner was passed on 04.11.2008. However, the Court had proceeded to pass the exparte decree only on 06.07.2009. In this connection this Court finds that even after passing of an exparte order, the trial court had not immediately examined the 1st respondent/plaintiff and pass the exparte decree. But, the trial court had passed exparte decree after the lapse of seven months.

7. On the other hand, Mrs.V.Srimathi, learned counsel for the respondents has submitted that the trial court had proceeded to pass exparte decree for non-filing of written statement. The revision petitioner had kept quiet for more than 110 days in filing the application for condoning the delay and even on that day also they had not filed their written statement along with the application, and hence, the impugned order passed by the trial court did not require the interference of this Court.

8. This Court after striking a balance between the submissions made by the learned counsel on either side finds that in pursuant to the exparte decree, the 1st respondent/plaintiff had taken out the execution proceedings and now the execution petition stands posted for execution of sale deed. It is brought to the notice of this Court by the learned counsel for the petitioners that the draft sale deed had already been submitted before the execution court. The learned counsel for the revision petitioners has submitted that unless and until the exparte decree dated 06.07.2009 is set aside, the petitioners would be put in to hardship and hence, he has urged to set aside the impugned order.

9. As addressed by the learned counsel for the petitioner, the petition was dismissed on the sole ground that the revision petitioners had not filed their written statement along with the application in I.A.No.2719 of 2009. The trial court has nowhere stated that the revision petitioners had failed to show sufficient cause to condone the delay of 110 days.

10. In this connection, Mr.T.S.Baskaran, learned counsel has indicated that the 1st revision petitioner has stated in the affidavit that she was suffered from jaundice and therefore, she was not able to move away from her house.

The 1st revision petitioner alone had been looking after the affairs of the suit on behalf of other defendants and therefore, she was not able to file the written statement at the earlier point of time. The learned counsel has further submitted that the delay of 110 days is not an abnormal one and it could be condoned by applying the theory of liberal view.

11. Considering the submission made on behalf of both sides, this Court finds that the delay of 110 days may be condoned and this Revision Petition may also be allowed on payment of costs. Accordingly, this Civil Revision Petition is allowed. The impugned order dated 20.09.2010 is set aside and the application in I.A.No.2719 of 2009 is allowed on payment of cost of Rs.2,000/- to the 1st respondent before the trial court on or before two weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed with this observation.

14.11.2016

Index: Yes / No
Internet: Yes / No
ssn

To

The Additional District Munsif,
Pondicherry.

T.MATHIVANAN, J.,

ssn

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