

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4221 of 2015
and M.P.No.1 of 2015

S.Saravanan

... Petitioner

Vs.

M.N.Elumalai Reddiyar

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.06.2015 made in I.A.No.79 of 2014 in O.S.No.126 of 2013 on the file of First Additional District Judge, Tiruvallur.

For Petitioner : Mr.C.S.Saravanan

ORDER

Heard the learned counsel appearing for the petitioner. Challenging the impugned order passed in I.A.No.79 of 2014 in O.S.No.126 of 2013 for allowing the application filed under Order 9 Rule 13 of the Civil Procedure Code, seeking to set aside the exparte decree dated 05.03.2014 passed in the suit in O.S.No.126 of 2013, the present Civil Revision Petition has been filed.

2. At the time of admission, arguments of learned counsel for the petitioner was heard in length. Considering the nature of order to be passed, notice to respondent is dispensed with.

3. The petitioner as Plaintiff filed the suit in O.S.No.126 of 2013 for the relief of Specific Performance and Permanent Injunction. In the suit, exparte order has been passed on 05.03.2014. The defendant has averred in I.A.No.79 of 2014 that he has not executed any agreement of sale and he received the notice in the suit only on 06.08.2014 and hence, within 30 days of receipt of notice, he filed the application, seeking to set aside the exparte order passed in the suit.

4. Learned counsel appearing for the petitioner/plaintiff submits that exparte decree has been passed on 05.03.2014 and the application in I.A.No.79 of 2014 seeking to set aside the exparte decree has been filed on 13.08.2014 with the delay of 127 days, but without filing an application for condoning the delay under Section 5 of Limitation Act, and that aspect was not considered by the trial court, while allowing the said application. He further submitted that the defendant has refused to receive notice and in such

circumstances, the suit was decreed exparte finding that "service sufficient". The learned counsel, relying on the decision reported in **2006-4-L.W.650 [M.Ramakrishnan Vs. Vinod Kumar]** submitted that where there is a delay, the same has to be explained by the applicant to the satisfaction of the court and filing a condone delay petition under Section 5 of the Limitation Act is not an empty formality and thus prayed for setting aside the order passed in I.A.No.79 of 2014 dated 29.06.2015.

5. It is an admitted fact that this petitioner as plaintiff filed suit for specific performance and permanent injunction and the suit has been decreed exparte. The only point that has to be decided herein is whether the application to set aside the exparte decree in the suit filed with delay could be allowed without condoning the delay of 127 days under Section 5 of Limitation Act.

6. According to the learned counsel for the plaintiff/petitioner, in the suit, even though notice has been sent, it was refused to receive by the defendant. On a perusal of the address of the defendant in the affidavit filed in support of this revision petition, it is seen that the respondent/defendant address is as under:-

*“M.N.Elumalai Reddiyar, S/o.M.Munusamy Reddiyar,
Muthu Mariyamman Koil Street, Kilambakkam, Tiruvallur
Taluk-602 024.”*

However, in the suit in O.S.No.126 of 2013 filed before the Principal District Judge, Tiruvallur, the address of the defendant is stated as under:-

*“M.N.Elumalai Reddiyar Son of M.Munusamy
Reddiyar, No.4/14 “A” Yadaval Street, South
Malayambakkam Village, Sriperumbudhur Taluk. ”*

In the counter filed in I.A.No.79 of 2015, the plaintiff has stated in paragraph 6 as under:-

“...This respondent/plaintiff sent registered notice dated 02.02.2014 to the petitioner/defendant which was returned by him as “Refused”. Hence the service was treated as sufficient. This court was pleased to decree the suit on 06.03.2014. TheÆn only this respondent/plaintiff sent a legal notice dated 02.08.2014 to present address. Since, the petitioner shifted his residence from South Malayambakkam Village to Kilambakkam which duly served upon him.”

7. As per Section 27 of General Clauses Act, only if the summons and post letter is sent to the correct address, it is deemed to be a sufficient service. It is seen that notice has been given to the defendant as per the address given in the plaint in O.S.No.126 of 2013 and another address has been given in I.A.No.79 of 2014. In such circumstances, it cannot be presumed that service is sufficient to the defendant, as the notice was not sent to correct address of the defendant. Admittedly, the defendant received a cover dated 02.08.2014 in the present address and as such within 30 days of such receipt of the cover, on 13.08.2014, the defendant filed application to set aside the exparte decree passed in the suit. In such circumstances, I am of the view that it is not necessary to file application under Section 5 of the Limitation Act.

8. As far as the decision relied on by the learned counsel for the petitioner/plaintiff reported in **2006-4-L.W.650[M.Ramakrishnan Vs. Vinod Kumar Goyal]** in respect of the proposition that filing a condone delay petition under Section 5 of the Limitation Act is not an empty formality, it is to be pointed out herein that in the case on hand, there is no evidence to show that summons and notice in Registered Post has been sent to the

correct address of the defendant. Hence, the argument advanced by the learned counsel for the petitioner as to the necessity of filing application under Section 5 of the Limitation Act will not merit acceptance and in my considered view, the application filed in I.A.No.79 of 2014 under Order 9 Rule 13 of C.P.C., will not materially affect the plaintiff/petitioner.

9. In view of the foregoing discussions, I am of the view that the impugned order dated 29.06.2015 does not warrant any interference and this Civil Revision Petition deserves to be dismissed.

10. At this juncture, the petitioner counsel sought a direction from this court for earlier disposal of the suit in O.S.No.126 of 2013 pending before the trial court.

11. Considering the submission made by the learned counsel for the petitioner, while dismissing the Civil Revision Petition, the trial court is directed to dispose of the suit in O.S.No.126 of 2013 within 6 months from the date of receipt of a copy of this order as written statement has already been filed by the defendant.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

nvsri

04.01.2016

To

The First Additional District Judge, Tiruvallur.

R.MALA,J.

nvsri

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