

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.NPD.No.2903 of 2012

and

M.P.No.1 of 2012

Ramu (Died)

1. Arasayee
2. Saravanan
3. Shanmugam
4. Sakthivel
5. Vetrivel
6. Jayalakshmi

... Petitioners

- Vs -

Kumar

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 01.03.2012 and made in I.A.1007 of 2008 in O.S.No.159 of 2005 on the file of the learned Principal District Munsif, Ulundurpet.

For Petitioners : Mr.T.Gandhi
For Respondent : Mr.N.Suresh

O R D E R

This memorandum of Civil Revision is directed against the Fair and Decreetal Order dated 01.03.2012 and made in I.A.1007 of 2008 in O.S.No.159 of 2005 on the file of the learned Principal District Munsif, Ulundurpet.

2. The revision petitioners herein are the plaintiffs in the suit whereas the respondent is the defendant.

3. It is manifested from the records that the revision petitioners have filed the suit in O.S.No.159 of 2005 on the file of the learned Principal District Munsif, Ulundurpet as against the respondent seeking the relief of specific performance of contract of sale and also for the consequential relief of injunction.

4. According to the revision petitioners, summons were taken to the respondent/defendant. Since they were returned unserved with an endorsement saying that addressee is not found, the revision petitioners had obtained an order from the Court to take substituted service for publication in the news paper. Accordingly, on 07.06.2006 paper publication was effected. Thereafter, on 27.06.2006 an exparte decree was passed in this case. Under this circumstance, the respondent being the defendant in the suit had taken out an application in I.A.No.1007 of 2008 in the above said suit to condone the delay of 822 days in filing the application under Order IX Rule 13 of C.P.C. to set aside the exparte decree dated 27.06.2006. This petition was resisted by the revision petitioners. However,

the learned Trial Judge after placing reliance upon the decision of this Court in **V.Amudha v. S.A.Arumugham and 2 others reported in 2000 (1) LW 547** had proceeded to allow the petition with a finding that the substituted service through paper publication is not adequate to presume that the service was sufficient and further the trial court had also found that the length of the delay is not the criterion; but there must be sufficient cause to condone the delay. Insofar as this case is concerned, the theory of liberal approach shall apply and only on that ground that petition was allowed on 01.03.2012.

5. Having been aggrieved by the impugned order dated 01.03.2012, the plaintiffs stand before this Court with this revision.

6. Mr.T.Gandhi, learned counsel for the revision petitioners had contended that to set aside the exparte order dated 27.06.2006 the revision petitioner has taken out the execution proceedings in E.P.No.31 of 2007 and even in that execution petition, notice was also not served on the respondent. However, after seeking leave of the Court, paper publication was effected and the execution proceedings for execution of sale deed was allowed and

subsequently, the draft sale deed was filed and the fair sale deed was engrossed and registered. Thereafter, another E.P.No.78 of 2008 was filed for taking possession of the property and that execution petition was also allowed on 05.08.2009 and consequently, the possession was delivered to the revision petitioner. He has also submitted that without considering all these facts, the learned Trial Judge proceeded to allow the petition, after condoning the delay of 488 days, is absolutely not sustainable in law and it is liable to be set aside.

7. On the other hand, Mr.N.Suresh, learned counsel appearing for the respondent/defendant has submitted that virtually the respondent/defendant was not at all served with the summons in the suit. He has also indicated that as rightly observed by the learned Trial Judge, the paper publication would not be sufficient. But, presume that there was proper service of summons on the defendant, he would submit that the details with reference to the filing of the execution petition and taking delivery of possession were not found placed in the counter statement filed by the respondent. The learned Trial Judge has not failed to discuss all the things in the impugned order. He would further submit that the learned Trial Judge has correctly observed the fact with proper perspective

and finally condoned the delay of 488 days that liberal approach could be applied based on the decision of this Court in ***V.Amudha v. S.A.Arumugham and 2 others reported in 2000 (1) LW 547*** which did not require any interference of this Court and he has also submitted that another application in interlocutory application under Order 9 Rule 13 is also pending before the trial court for exparte decree as the revision is pending.

8. This Court considered the submission made by both sides and as rightly argued by Mr.N.Suresh, by virtue of the execution petition filed by the revision petitioners, the details of registration of sale deed and delivery of possession are not available even in the counter statement filed by the revision petitioner.

9. The learned counsel Mr.T.Gandhi has also pointed out that the disputed filing of execution petition and taking up the delivery of possession the learned Trial Judge miserably has failed to discuss all these things in the impugned order. However, this Court found that another application Under Order IX Rule 13 is pending. If at all the petitioners are given liberty to object before the

trial court under Section 5 of the Limitation Act, regarding 822 days delay is concerned, this impugned order does not suffer any infirmity and therefore, the revision petition is liable to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed and the impugned order is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.11.2016

Index: Yes / No
Internet: Yes / No
ssn

To

The Principal District Munsif,
Ulundurpet.

T.MATHIVANAN, J. ,

ssn

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