

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
27.06.2017	14.11.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.1619 of 2017
and C.M.P.No.7654 of 2017

M.Chandra

.. Petitioner/Defendant

Vs.

N.Boopathy

.. Respondent/Plaintiff

This Civil revision is filed under Section 115 of C.P.C. against the order, dated 06.03.2017, made in I.A.No.2369 of 2016 in I.A.No.178 of 2013 in O.S.No.59 of 2007 on the file of the Principal District Judge, Puducherry.

For Petitioner : Mr.T.S.Baskaran
 For Respondent : Mr.P.Veeraraghavan
 Ms.P.T.Asha, Amicus Curie

ORDER

The respondent herein has filed a suit in O.S.No.59 of 2007 before the Principal District Judge, Puducherry for specific performance of

sale agreement, dated 8.4.2005 against the petitioner. Petitioner herein filed written statement disputing the averments made in the plaint. Subsequently, the petitioner/defendant was set exparte and thereafter exparte decree was passed on 26.9.2009. The petitioner herein filed an application to set aside the exparte decree, along with application in I.A.No.435 of 2009 to condone the delay of 23 days in filing a petition. The aforesaid application was allowed on payment of cost of Rs.750/- to be paid by the petitioner/defendant directly to the respondent/plaintiff on or before 20.04.2010. As the revision petitioner did not pay the cost, the application in I.A.No.435 of 2009 was dismissed on 21.04.2010. Thereafter, petitioner has filed an application before the Court below seeking extension of time to to pay the cost. The said application was returned on 16.11.2011 with an endorsement, questioning the maintainability. Hence, the petitioner has filed C.R.P.No.5074 of 2011 before this Court. By an order, dated 27.2.2012, this Court allowed the Civil Revision petition on condition of depositing a sum of Rs.95,000/- (Rupees ninety five thousand only) by the petitioner herein to the respondent herein before the executing Court towards the expenses incurred by the respondent herein in getting the document registered and another sum of Rs.5000/- towards cost to the respondent within a period of two weeks from the date of receipt of a copy of

the said order. Further, the revision petitioner was directed to pay Rs.750/- as ordered in I.A.No.435 of 2009 within a period of two weeks from the date of receipt of a copy of this order. On compliance of the conditional order passed by this Court in C.R.P.No.5074 of 2011 and the order of the trial Court in I.A.No.435 of 2009, said application was allowed by the trial Court. Thereafter, an application in I.A.No.178 of 2013 to set aside the exparte decree was taken on file. However, the same was dismissed on 12.6.2014 for non payment of batta. Therefore, she filed the present application in I.A.No.2369 of 2016 to condone the delay of 292 days in filing an application to set aside the order, dated 12.6.2014 passed in I.A.No.178 of 2013.

2 The learned counsel for the petitioner would submit that exparte judgment and decree passed by the trial Court is a cryptic judgment without adjudicating the issues raised in the suit. Therefore, the judgment and decree passed by the trial Court is not a judgment as contemplated under Section 2(9) and Sec.33 of C.P.C. The trial Court without framing any issue has passed cryptic judgment. Hence, the judgment passed by the trial Court is contrary to Section 2(9) and Sec.33 of C.P.C. The petitioner has filed an application in I.A.No.178 of 2013 under Order IX Rule 13 C.P.C. to set aside the

exparte decree passed against the petitioner on 26.6.2009. Even though the petitioner has stated bonafide reason in the affidavit and produced medical records to prove her ailments, the trial Court erroneously dismissed the said application for non-payment of batta. Therefore, the petitioner has filed the present Civil Revision petition before this Court to set aside the impugned order. To substantiate the case of the petitioner, the learned counsel for the petitioner relied on the decision of the Division Bench of this Court in the case of **Meenakshisundaram Textiles vs. Valliammal Textiles Ltd. (2011(3) CTC 168)**.

3 The learned counsel for the respondent would submit that the petitioner has filed an application only with an intention to drag on the proceedings. Pursuant to the exparte decree passed by the trial Court, the respondent/plaintiff has filed E.P.No.82 of 2009 for depositing balance sale consideration and the sale deed was registered on 3.5.2011 in document No.1962/2011 in favour of the respondent. Thereafter, the respondent has filed E.P.No.227 of 2014 for delivery of possession of the suit property and possession was taken by the respondent on 28.4.2017. However, he received the copy of order of this Court granting interim stay in C.R.P.No.5074 of 2011 only on 29.4.2017. The petitioner did not challenge the execution proceedings

in E.P.No.82 of 2009 nor taken any step to set aside the registered sale deed dated 3.5.2011. Hence, the petitioner lost her opportunity on the ground of law of limitation also. Hence, there is no error or illegality in the order passed by the Court below.

4 Heard the learned counsel for the petitioner, learned counsel for the respondent, and Ms.P.T.Asha, Amicus Curie to assist the Court, perused the materials on records and the decisions of the Hon'ble Supreme Court and this Court.

5 The contention of the learned counsel for the petitioner is that the petitioner has filed an application in I.A.No.178 of 2013 under Order IX Rule 13 C.P.C. to set aside the exparte decree passed by the trial Court on 26.6.2009. However, the said application was dismissed for non payment of batta. Pursuant to the order passed by this Court in C.R.P.No.5074 of 2011, the present application in I.A.No.2369 of 2016 has been filed by the petitioner to condone the delay of 292 days to restore the I.A.No.178 of 2013 and the same was dismissed by the Court below. Therefore, the petitioner has filed the present Civil Revision petition challenging the order passed by the Court below in I.A.No.2369 of 2016.

6. The Division Bench of this Court in the case of **Meenakshisundaram Textiles vs. Valliammal Textiles Ltd. (supra)** by relying upon various decisions of the Hon'ble Supreme Court and the provisions of Code of Civil Procedure, has held as follows:

"20. It is also relevant to point out that under Section 96(2) of the Code of Civil Procedure, an appeal may lie from an original decree passed ex parte. Two remedies are available to an aggrieved person to question the ex parte decree. One is that he may file an application to set aside the ex parte decree as provided under Order IX Rule 13 of Code of Civil Procedure. In such event, the Court which passed the judgment and decree will have to consider the reasons for setting aside such judgment and decree, which may be more or less the explanation as to the failure of non-appearance. The other remedy is that he may prefer an appeal under Section 96(2) and in such event, the appellate Court should necessarily go into the merits and find out whether the decree could be set aside or not. In case an appeal is laid, in the absence of reasons in the judgment, the appellate Court has to necessarily remand the case to the trial Court for fresh consideration. For that reason, the judgment should contain the reasons and should be in conformity with the provisions of Section 2(9) read with Order XX Rule 4 of the Code of Civil Procedure.

21. From the above discussions, it is manifestly clear that even a judgment rendered *ex parte* and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an *ex parte* judgment and decree. In view of the above, in the event the defendant is set *ex parte*, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an *ex parte* judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment."

7 Following the aforesaid judgment, this Court in **G.Selvam and 4 others vs. Kasthuri and 8 others (2015(4) CTC 673)** has held as follows:

"29. Following the ratio laid down in the judgment reported in **2012 (5) SCC 265 (Ramappa Gowda vs C.C. Chandregowda (dead) by LRs and another,)** the Division Bench of this Court, reported in **2013 (4) CTC 545 (Chitrakala vs P. Mahesh and others)** (cited *supra*) (wherein, I was a party to the

judgment), held that the burden of proof lies on plaintiff, irrespective of there being any Written Statement or evidence of rebuttal, plaintiff to succeed in Suit only on the basis of strength in his case and not on the basis of weakness in Defendant's case.

30. Further, the Division Bench held that the decree cannot be passed solely on the plaint averments, as these averments are not substantiated. Hence the Division Bench remanded the matter back to the trial court for fresh disposal.

34. It is pertinent to note that pursuant to the preliminary decree passed on 28.1.1998, the plaintiff filed a Final Decree application in I.A.No.742 of 1999 in O.S.No.752 of 1989 and during the pendency of the final decree application, the plaintiff died. In spite of the death of the plaintiff and the defendants remaining *ex parte* in the final decree proceedings, the trial Court proceeded with the final decree application and passed the final decree on 25.4.2007. Aggrieved over the same, the legal representatives of the deceased 18th defendant preferred an appeal in A.S.No.31/2007 on the file of Subordinate Court, Poonamalee and the lower Appellate Court also confirmed the final decree passed in I.A.No.742/1999. Challenging the same, the legal representatives of the 18th defendant preferred Second Appeal in S.A.No.266/11 before this Court and this Court had set aside the judgment and decree of the Courts below and allowed the Second Appeal and remanded the

matter to the trial court for fresh disposal, after impleading the legal representatives of the deceased parties.

53. With these observations, the judgment and decree dated 28.01.1998 passed in O.S.No.752 of 1989 are set aside and the matter is remanded to the trial Court for fresh disposal as stated above. Consequently, the Civil Revision Petition is allowed. No costs. Since I have given liberty to the proposed parties to file appropriate applications before the trial court, to get themselves impleaded in the suit, I am not passing any orders on merits in the petitions in M.P.Nos.5 of 2014, 1 of 2015 and 2 of 2015 and therefore M.P.Nos.5/2014, 1/2015 and 2 of 2015 are closed. Consequently, connected MP No.1 of 2013 is also closed.

54. After impleading all the parties and after affording opportunity to all the parties, the trial court is directed to dispose of the suit in O.S.No.752 of 1989 on merits and in accordance with law, within a period of six months from the date of receipt of copy of this order."

8 Ms.P.T.Asha, Amicus Curie submitted that the Hon'ble Supreme Court in **M.K.Prasad vs. P.Arumugam (2001(6) SCC 176)** following the judgment reported in **1998(7)SCC 123 (N.Balakrishnan vs. M.Krishnamurthy)**, has held that a judgment which has no reasoning has to be set aside and in

paragraph 10 of the said judgment, the Hon'ble Supreme Court has observed that "while deciding the application for setting aside the exparte decree the court should have kept in mind the judgment impugned, the extent of property involved and the stake of the parties" and ultimately, the delay was condoned on payment of cost. Therefore, reading of Section 5 of the Limitation Act along with Order XX Rule 4(2) of C.P.C. and the judgment of the Hon'ble Supreme Court cited supra, a non speaking judgment would be one of the sufficient causes for condoning the delay in filing an application to set aside the exparte decree.

9 According to the learned counsel for the petitioner, the instant application to condone the delay of 292 days was filed for the bonafide reason that the petitioner was not in a position to proceed with the case in time, further petitioner also filed medical records to fortify her contention. Without considering the medical certificate, the trial Court simply rejected the case of the petitioner and dismissed the application. In the counter affidavit filed by the respondent, it is stated that pursuant to the exparte decree passed by the trial Court, the respondent/plaintiff has filed E.P.No.82 of 2009 for depositing balance sale consideration and the sale deed was registered on 3.5.2011 in

document No.1962/2011 in favour of the respondent/plaintiff. Thereafter, the respondent has filed E.P.No.227 of 2014 for delivery of possession of the suit property and possession was taken by the respondent on 28.4.2017 at 2.40 p.m. However, he received the copy of order of this Court granting interim stay in C.R.P.No.5074 of 2011 only on 29.4.2017. A perusal of the certified copy of the order shows that the order was passed on 6.3.2017, the petitioner has filed copy application on 7.3.2017, copy was ready on 21.4.2017 and the same was received by the respondent on the same day. On 26.4.2017, the present Civil revision petition has been filed and the same was listed before this Court on 28.4.2017 for admission. Amin was taken possession on 27.4.2017. Taking into consideration of the judgments of the Hon'ble Supreme Court and this Court cited supra, provisions under Sec.2(9) of Code of Civil Procedure and considering the reason stated in the affidavit filed in support of the application for condoning the delay of 292 days in filing the set aside petition, the trial Court has not appreciated the case of the petitioner and without giving any reason, dismissed the said application.

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10 In the light of the decisions cited supra, exparte judgment passed by the Court below is not in consonance with Sec.2(9) of C.P.C. and

therefore, it is clear that the judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9) of C.P.C. The impugned order passed by the Court below in I.A.No.2369 of 2016 dismissing the application for condoning the delay of 292 days in filing the set aside petition is liable to be set aside.

11 In view of the aforesaid reasons, this Court has no hesitation to set aside the impugned order, however with cost. In the facts and circumstances of the case, this Court is inclined to pass the following order:

(i) The impugned order passed by the learned Principal District Judge, Puducherry in I.A.No.2369 of 2016 in I.A.No.178 of 2013 in O.S.No.59 of 2007 be set aside on condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees ten thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order, in default the Civil Revision petition stands dismissed.

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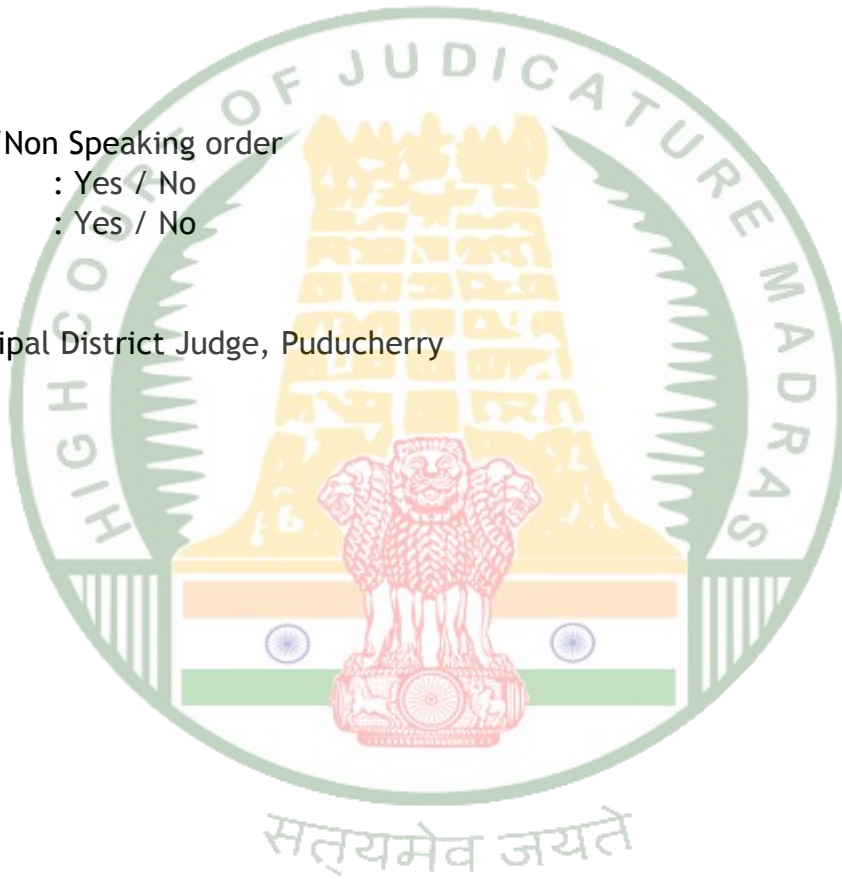
(ii) In the event of compliance of the conditional order passed hereinabove, the trial Court shall consider the application in I.A.No.178 of

2013 on merits and in accordance with law, without being influenced by any of the observations made by this Court hereinabove.

12 The Civil revision petition stands allowed on the above terms.

14.11.2017

Speaking/Non Speaking order
Index : Yes / No
Internet : Yes / No
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To
The Principal District Judge, Puducherry



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D.KRISHNAKUMAR, J.

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Pre-Delivery order in
C.R.P. (NPD) No.1619 of 2017
and C.M.P.No.7654 of 2017

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Dated: .11.2017