

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3255 of 2014 & C.R.P.(NPD)No.4294 of 2014

C.M.A.No.3255 of 2014

Tigi George
S/o P.V.George

.. Appellant

-vs-

01. Mr.Manoharan and Associates
Sole Proprietor concern rep by its
Proprietor Manoharan
No.134, T.V.Samy Road (West)
R.S.Puram, Coimbatore
02. St.Mary's Education & Charitable Trust
rep by its Secretary P.U.Paulson
No.425, Mettupalayam Road
Coimbatore
03. V.P.Thambi
04. P.U.Paulson
P.V.Achamma (died)
05. Beena Paul
06. Anju Paul
07. Ashwin Paul
08. Joisy Joy
09. Dariyroy
P.V.Simon (died)
10. Abraham Titus
11. K.I.Edwy
12. Joseukkuru

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Order 43, Rule 1 of the Civil Procedure Code, against the fair and decretal order dated 14.08.2014 made in I.A.No.103 of 2014 in O.S.No.769 of 2007 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Appellant

:: Mr.S.Mukunth
for M/s Sarvabhauman &
Associates

For Respondents

:: Ms.Udaya P.S.Menon for R1
Mr.S.V.Pravin Rathinam for
R2 & 4

C.R.P. (NPD) No.4294 of 2014

V.P.Thambi

.. Petitioner

-vs-

01. Mr.Manoharan and Associates
Sole Proprietor concern rep by its
Proprietor Manoharan
No.134, T.V.Samy Road (West)
R.S.Puram, Coimbatore
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04. Beena Paul
05. Anju Paul
06. Ashwin Paul
07. Joisy Joy
08. Dariyroy
P.V.Simon (died)
09. Tigi George
10. Abraham Titus
11. K.I.Edwy
12. Joseukkuru .. Respondents

Memorandum of Grounds of Civil Revision Petition under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 25.07.2014 made in I.A.No.104 of 2014 in O.S.No.769 of 2007 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioner :: Mr.S.Mukunth for
M/s Sarvabhauman & Associates

For Respondents:: Ms.Udaya P.S.Menon for R1
Mr.S.V.Pravin Rathinam for R2 & R3
No appearance for R4, 6, 9 to 11
Not ready in notice for R5, 7, 8 &
12

JUDGMENT

The civil miscellaneous appeal has been filed by Mr.Tigi George, who is the eleventh defendant in O.S.No.769 of 2007, challenging the correctness of the order passed in I.A.No.103 of 2014 in O.S.No.769 of 2007 dated 14.8.2014 by the learned IV Additional District Judge, Coimbatore, dismissing the application to set aside the ex parte decree.

2. The civil revision petition has been filed by Mr.V.P.Thambi, who is the second defendant in O.S.No.769 of 2007, challenging the correctness of the order passed in I.A.No.104 of 2014 in O.S.No.769 of 2007 dated 25.7.2014 by the learned IV Additional District Judge, Coimbatore, in and by which the Court below has dismissed the application to condone the delay of 650 days in filing the application to set aside the ex parte decree. With the consent of the learned counsel on either side, both the matters were taken up together and disposed of by this common judgment.

3. Learned counsel appearing for both the appellant and the revision petitioner submitted that when a suit was filed by the first respondent/plaintiff for recovery of a sum of Rs.22,78,769.85 against the first defendant Trust and its trustees on the file of the District Court, Coimbatore in the month of October, 2007, the Trust was not functioning properly, therefore, no notice was served on the trustees in the main suit. Some of the defendants, who appeared through their counsel in the said suit, also failed to intimate about the pendency of the suit to the appellant and the revision petitioner. Moreover, the defendants 1 & 3 to 9, being close family members, colluding with the first defendant, have not intimated about the pendency of the suit, as a result only the revision petitioner/second defendant, Mr.V.P.Thambi was served with the notice in the execution petition for the hearing on 26.3.2012. Suddenly he had also suffered nervous problem and his right leg was inactive due to paralysis attack. As he was advised to take treatment in Kerala, he was not in a position to engage a counsel to file Vakalatnama. However, in the third week of December, 2013, he came to know through Court staff that the trust property was brought for sale on 16.12.2013 on the basis of the decree passed on 9.8.2010. Immediately, after engaging a counsel, he came to know that himself and the tenth and eleventh defendants were called absent and set ex parte in the main suit on 8.4.2008. Subsequently, the same was also transferred to the file of the learned IV Additional District Judge in the year 2009 and the same was also decreed on 9.8.2010. Thereafter, an execution petition was also filed in the year 2011, in which the revision petitioner was served with the notice to his residential address for the hearing to be held on 26.3.2012. Due to his illness and age factor, he was unable to file the application to set aside the ex parte decree in time. In the meanwhile, the delay of 650 days in filing the application to set aside the ex parte decree has occurred. Since the said delay had occurred only due to the aforementioned reason, the Court below has wrongly and erroneously proceeded, as though there was no bona fide reason to condone the delay. Since the revision petitioner was physically not able to move around, as he was facing almost a paralytic attack, the application seeking to condone the delay in moving the application to set aside the ex parte decree, being not wilful, deserves to be allowed by setting aside the impugned order.

<https://hcservices.ecourts.gov.in/hcservices/> 3. Again, canvassing the case of Mr.Tigi George, who is the appellant herein and the eleventh defendant in the suit, challenging the correctness of the decretal order passed in

I.A.No.103 of 2014 dated 14.8.2014 to set aside the ex parte decree passed on 9.8.2010, the learned counsel submitted that when the ex parte decree was passed on 9.8.2010, he was not aware of the same, because no one informed about the same. When none of the defendants was closely associated with the appellant/eleventh defendant, he was not able to appear in the suit, as a result the suit was proceeded ex parte. When there was no proper notice served upon the eleventh defendant, after coming to know of the ex parte decree that was passed on 9.8.2010, to set aside the same, an application was made ready on 2.1.2014. But the genuine and bona fide reason mentioned to justify his non appearance on the date of passing of the ex parte decree was completely refused to be seen by the Court below. Therefore, if the order of the Court below is set aside and a fair chance is given to the appellant/eleventh defendant, no prejudice would be caused to any one.

4. Heard the learned counsel for the first respondent/plaintiff as well.

5. This Court is not able to find any justification whatsoever in the submissions of the learned counsel for the appellant and the revision petitioner. The reasons are many. Firstly, when the suit was filed by the first respondent/plaintiff for recovery of a sum of Rs.22,78,769.85 from the defendants with interest at the rate of 24% per annum from the date of suit till the date of realization, a compromise was reached between the parties. Only on the agreement reached by the defendants, a compromise decree was passed for a sum of Rs.15,00,000/- to be paid within a period of three months from the date of the decree without interest and costs. The compromise decree further says that in the event the defendants satisfied the decretal amount within three months, there would not be any interest. If the defendants failed to satisfy the decree within the stipulated period of three months, the defendants were directed to pay the decretal amount of Rs.15,00,000/- with interest at the rate of 12% per annum and costs also. Pursuant to the compromise decree, the first respondent/plaintiff filed an execution petition to deposit the decretal amount with further interest from the date of suit till the date of realization. The record shows that several notices were issued to the appellant and the revision petitioner. On filing of the execution petition, even on 21.2.2012, fresh notices were issued to the parties. Later on, a paper publication was also issued in the local newspaper for the appearance of the respondents therein including the appellant and the revision petitioner. After a lapse of two years, some of the respondents filed their counter statement on 7.9.2012 and 29.11.2012. Even on 10.10.2012, the executing Court directed the parties to appear in person and on 28.2.2013, an order of attachment of the suit properties was made. Even thereafter, several notices were issued to the judgment debtors. In the meanwhile, the paper publication was also effected on 12.7.2013 informing the sale of the suit properties. Finally the Court below ordered for sale of item No.2 of the property on 24.10.2013 and posted the case to 16.12.2013. When the first

defendant is a Trust and the other defendants are the trustees, they are liable for their own acts and they cannot plead that they had no intimation from any one of them. Therefore, this Court finds no justification whatsoever to interfere with the orders challenged in both the appeal and the revision petition.

6. For all the reasons mentioned above, both the civil miscellaneous appeal and the civil revision petition are dismissed. Consequently, M.P.Nos.1 of 2014 are also dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ss

To

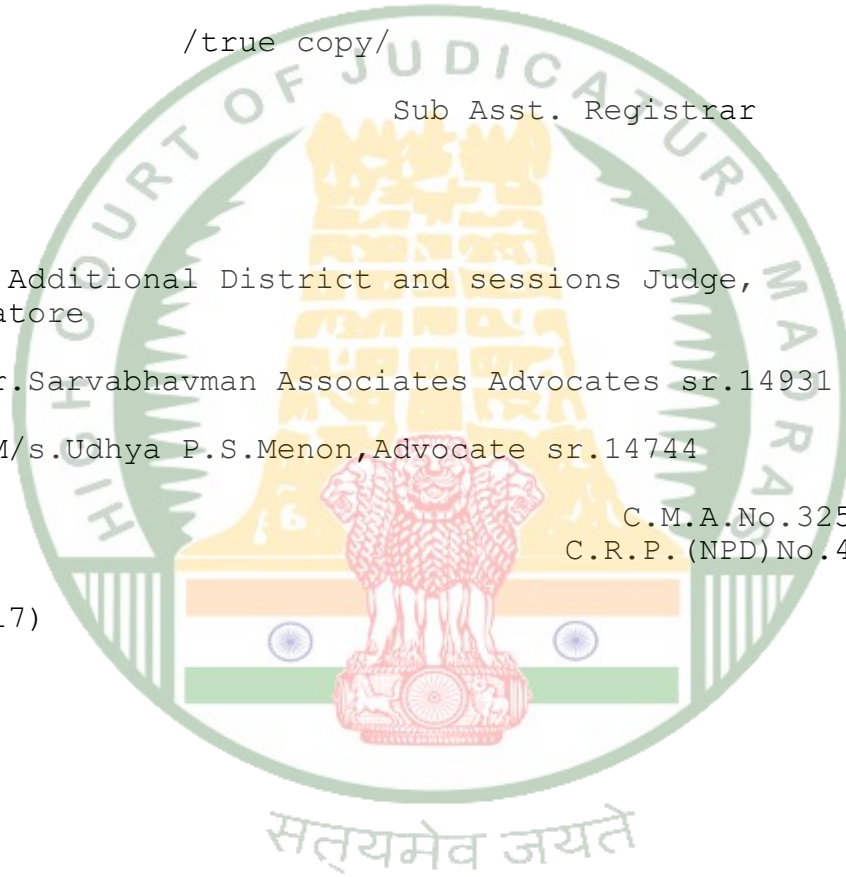
1. The IV Additional District and sessions Judge,
Coimbatore

+1cc to Mr.Sarvabhavman Associates Advocates sr.14931

+2ccs to M/s.Udhya P.S.Menon, Advocate sr.14744

C.M.A.No.3255 of 2014 &
C.R.P.(NPD)No.4294 of 2014

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