

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1325 of 2008
& M.P.No.1 of 2008

1.Joseph Benziger
2.Amala Benziger
3.Mary Nirmala

.. Petitioners

Vs.

1.Jey Cherish and Co. Ltd.,
rep. By its Chairman
and Managing Director
Mathew Cherian
2.P.Albert
3.The Sub-Registrar
Adyar,
Chennai-600 020.

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 17.11.2004 made in I.A.No.264 of 2004 in I.A.No.1043 of 2003 in O.S.No.599 of 2001 on the file of the District Munsif, Alandur.

For Petitioners : Mr.S.T.Bharath Gowtham
for Mr.T.R.Rajaraman

For R1 : No appearance
For R2 : Not ready in notice
For R3 : Mr.M.Venugopal,
Special Government Pleader(CS)

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 17.11.2004 made in I.A.No.264 of 2004 in I.A.No.1043 of 2003 in O.S.No.599 of 2001 on the file of the District Munsif, Alandur.

2. The petitioners are defendants 2,3 and 6, first respondent is the plaintiff, second respondent is first defendant and third respondent is the fifth defendant in O.S.No.599 of 2001 on the file of the District Munsif, Alandur. The first respondent filed the said suit for declaration that two sale deeds dated 14.07.2000 bearing Document Nos.2316 and 2317 of 2000, both executed by the first defendant/second respondent in favour of the third defendant/second petitioner and fourth defendant respectively are null and void to declare the general power of Attorney, registered as Document No.725 of 2000 by appointing the first defendant/second respondent as agent of first respondent's father as void and inoperative; for permanent injunction restraining the defendants 1 to 4 from in any way alienating or encumbering or dealing with the suit property; and for permanent injunction restraining the second respondent from representing as the agent of the first respondent

and doing any act on behalf of the company.

3. The petitioners entered appearance and filed written statement and are contesting the suit. The first respondent filed proof affidavit and suit was posted for cross-examination by petitioners. The petitioners and their counsel did not appear on two occasions and therefore they were set exparte and exparte decree was passed. The petitioners filed I.A.No.1043 of 2003 to set aside the exparte decree. The first respondent and his counsel represented that they have no objection for setting aside the exparte decree, provided the suit is disposed of expeditiously. The learned Judge allowed the application I.A.No.1043 of 2003 on condition that the petitioners should appear along with their counsel in the main suit on 30.10.2003 to cross-examine PW1, failing which petition would stand dismissed. The petitioners and their counsel did not appear on that day to cross-examine PW1. The said application was dismissed for default. The petitioners filed present I.A.No.264 of 2004 to restore the I.A.No.1043 of 2003. According to the petitioners, their counsel informed them that the suit is posted to 03.11.2003 instead of 30.10.2003. On 03.11.2003, they were present in the Court and case was not called. On further verification, they found that I.A.No.1043 of 2003 was dismissed for default on

30.10.2003. The first respondent filed counter affidavit and denied all the averments made by the petitioners and submitted that on various dates, the suit was adjourned for cross-examination of petitioners. They did not appear and examine PW1. They were set exparte and exparte decree was passed. On filing the petition in I.A.No.1043 of 2003, the exparte decree was set aside on condition that petitioners should appear along with their counsel to cross examine PW1. They did not comply with the said order and the said order was dismissed. According to the respondents, the present I.A is not maintainable. The petitioners must either file an appeal or revision. The learned Judge considering the averments in the affidavit and counter affidavit and materials available on record and failure on the part of the petitioners to comply the condition, imposed in I.A.No.1043 of 2003, dismissed the present application.

4. Against the said order of dismissal made in I.A.No.264 of 2004 in I.A.No.1043 of 2003 in O.S.No.599 of 2001, the present Civil Revision Petition is filed by the petitioners.

5. The learned counsel appearing for the petitioners reiterated the averments made in the affidavit and contentions raised in the grounds and relied on the two judgments reported in "**2014 (3)**

MWN (Civil) 599 in the case of Urbanedge Hotels(P) Ltd., Rep. By its Director, Kumar Sitaraman Vs. Siraj & Renu, rep. By its Proprietor, Mr.Siraj Hasan” and “(2000) 3 SCC 54 in the case of G.P.Srivastava Vs. R.K.Raizada and others”.

6. Heard the learned counsel appearing for the petitioners and Mr.M.Venugopal, the learned Special Government Pleader (CS) appearing for the third respondent and perused the materials available on record.

7. From the materials available on records, it is seen that the application filed by the petitioners to set aside the exparte decree, I.A.No.1043 of 2003 was allowed on condition that the petitioners appear before this Court on 30.10.2003 and proceed to cross examine PW1. They failed to comply with the said conditional order and application was dismissed for default. The reason given by the petitioners for not appearing on 30.10.2003 and failure to cross examine PW1 is not acceptable one. The petitioners were given ample opportunity to proceed with trial. But they did not utilize the said opportunity. In view of the above facts, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the above case. From the above case, it is clear that the

intention of the petitioners is only to drag on the proceedings. Further, the contention of the petitioners is that the application to restore I.A.No.1043 of 2003 is not maintainable as the same was dismissed for default for not complying the conditional order has considerable force. The learned Judge has considered all the above facts and has rightly dismissed the application. There is no illegality or irregularity warranting interference with the order of the learned trial Judge dated 17.11.2004.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
gsa

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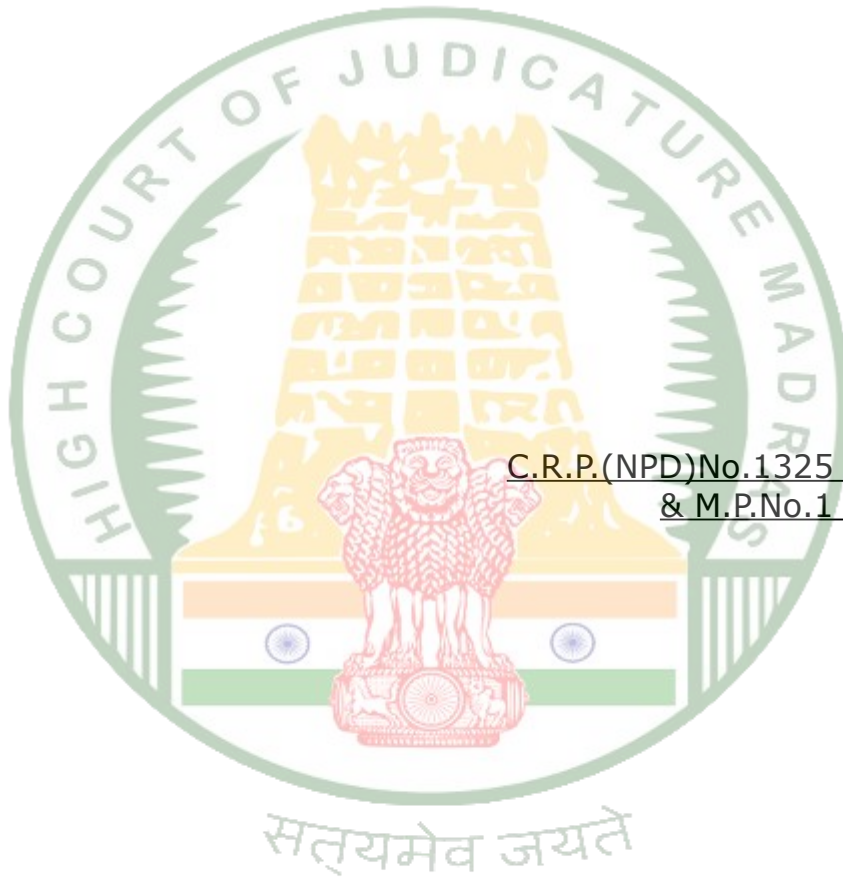
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The District Munsif,
Alandur.

V.M.VELUMANI,J.

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