

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.02.2017

Pronounced on: 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD) No.2218 of 2012

Umakirubakaran

.. Petitioner

Vs.

1.J.Komathi

2.P.Shanthi

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 07.06.2011 passed in I.A.No.25 of 2010 in A.S.No.30 of 2007, on the file of the Principal District Judge, Vellore.

For Petitioner : Mr.A.M.Loganathan

For Respondents : Mr.B.R.Shankaralingam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 07.06.2011 passed in I.A.No.25 of 2010 in A.S.No.30 of 2007 by the learned Principal District Judge, Vellore and allow the petition filed under Section 5 of Limitation Act.

2.The case of the revision petitioner is that she has filed a suit for specific performance against the respondents herein in O.S.No.209 of 1989 before the Sub-Court, Ranipet on the basis of the sale agreement dated 19.05.1996 executed between the revision petitioner and respondents herein. On keen contest, the suit came to be decreed in favour of the revision petitioner by the trial Court vide judgment and decree dated 11.01.2007.

3.However, an appeal in A.S.No.30 of 2007 came to be filed before the First Appellate Court viz., Principal District Court, Vellore and without even noticing the revision petitioner, the said appeal was heard and the judgment and decree made by the trial Court was set

aside on 18.12.2007 by setting the revision petitioner as ex-parte. Thereupon while the revision petitioner belatedly got knowledge of the order made by the first Appellate Court in the year 2010 and immediately she preferred an interlocutory application in I.A. No.25 of 2010 before the First Appellate Court under Order 41 Rule 21 of Civil Procedure Code to rehear the appeal, such that enabling the petitioner to participate in the appeal proceedings. Since the above Interlocutory Application has been filed beyond the prescribed limitation period of 30 days, it was filed along with an application under Section 5 of Limitation Act seeking to condone the delay of 722 days in filing the petition for rehearing the appeal. However, the learned Appellate Judge without considering the fact that the revision petitioner was not served in appeal proceedings, by an order and decree dated 07.06.2011 has dismissed the application of the revision petitioner to rehear the appeal. The said order of dismissal of the revision petitioner's application to re-hear the appeal is impugned in this Civil Revision Petition.

4.I heard Mr.A.M.Loganathan, learned counsel appearing for the petitioner and Mr.B.R.Shankaralingam, learned counsel appearing for the respondents and perused the records.

5.The learned counsel for the revision petitioner submitted that the order is ex-facie illegal, since the first Appellate Court failed to take into account that a decree in favor of the revision petitioner is abruptly set aside without even notice served to the revision petitioner, whereas the appellate Court below has merely ordered for a paper publication in news paper instead of directing the respondents herein to take up a fresh notice to the respondent in the appeal proceedings. Because of the said act of the Appellate Court, the revision petitioner was not in a position to contest the appeal proceedings, despite holding a decree in her favour. In any event a decree in favour of a person can be set aside only upon hearing such decree holder.

6.Per contra, the learned counsel for the respondents submitted that the claim of the revision petitioner that she is unaware of the appeal proceedings is absolutely false. Further, the case of the revision petitioner that she was totally unaware of the order made by the First Appellate Court in setting aside the decree is also false. Originally the notice sent to the petitioner herein was returned as unclaimed and only thereafter, the learned Appellate Judge has ordered for a paper publication. Moreover the revision petitioner had also due knowledge

of the order of the first Appellate Court while attended the execution proceedings in E.P.No.49 of 2008 before the trial Court, wherein an objection dated 24.07.2009 to the execution proceedings was filed by the respondents precisely stating that the decree is not in existence.

7.On perusal of the records it is found that the private notice sent in the appeal proceedings remained unclaimed by the revision petitioner. Further it is also noticeable that only after the notice was unclaimed by the revision petitioner, paper publication was ordered and the same was duly taken by the respondent herein in the appeal proceedings. Hence, this Court is not inclined to appreciate the contention of the revision petitioner that there was no notice served on her in the appeal proceedings.

8.At this juncture it is indispensable to note that the learned counsel for the revision petitioner was served with a copy of the objection made by the respondents in the execution proceedings initiated by the revision petitioner herein as early in the year 2009. Further Ex.P1 disclose that the said copy of objection stating that the decree made by the trial Court is not in existence in the light of the allowing of appeal preferred by the respondent herein, stood served

upon the learned counsel for the revision petitioner on 24.07.2009. Therefore it is patent that the revision petitioner has got due knowledge of the appeal proceedings in the year 2009 itself. It is also relevant to note here that earlier the revision petitioner has evaded the notice by not claiming the same, besides that she has not chosen to appear pursuant to paper publication made by the respondents herein. It is also noteworthy that the order of the Appellate Court is made on merits and not merely by setting the revision petitioner as ex-parte.

9. Therefore, this Court finds that the revision petitioner having got knowledge of the disposal of the appeal through Ex.P1 on 24.07.2009, but has neither filed the petition within time nor given any satisfactory explanation for the delay at his end in preferring the interlocutory application. Hence, the delay cannot be condoned mechanically. There is no reason to interfere with the order of the learned District Judge and the same is hereby confirmed.

10. In the light of the above facts, this Civil Revision Petition is liable to be dismissed. Accordingly, this civil revision petition is dismissed.

11.In the result, the Civil Revision Petition is dismissed by confirming the order passed in I.A.No.25 of 2010 in A.S.No.30 of 2007, dated 07.06.2011, on the file of the Principal District Judge, Vellore. No costs.

27.03.2017

Note:Issue order copy on 12.06.2017.
Internet:Yes
Index:Yes

vs

To

The Principal District Judge,
Vellore.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.2218 of 2012**

27.03.2017