

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.763 and 764 of 2012
& M.P.No.1 of 2012

1.V.Mariappan
power agent of A.Gopal

2.Kanaga
3.Prakash
4.Arul

.. Petitioners in
both CRPs.

Vs.

1.P.Venga Gounder (deceased)

2.Selvaraj
3.T.Vijaya
4.C.Saroja
5.R.Kalaiyarasi
6.Thailammal

(RR2 to 6 brought on record as legal heirs
of the deceased sole respondent viz.,
P.Venga Gounder vide Court order dated
27.11.2017 made in C.M.P.Nos.14787 to 14789
of 2016 in C.R.P.No.763 of 2012 and C.M.P.
Nos.14790 to 14792 of 2016 in C.R.P.No.
764 of 2012)

.. Respondents
in both CRPs.

PRAYER: Civil Revision Petitions are filed under Section 115 of the
Civil Procedure Code, against the fair and decretal order dated

04.02.2009 made in I.A.Nos.136 of 2009 and 332 of 2008 in O.S.No.9 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem.

For Petitioners : Mr.P.Jagadeesan
in both CRPs.

For Respondents : Mr.P.Rathanavel
in both CRPs.

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 04.02.2009 made in I.A.Nos.136 of 2009 and 332 of 2008 in O.S.No.9 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem.

2. In both the Civil Revision Petitions, the parties are one and the same, the issues are inter linked and hence, they are disposed of by this common order.

3. First petitioner is the defendant and first respondent is the plaintiff in O.S.No.9 of 2007 on the file of the Additional District Court (Fast Track Court No.I), Salem. The first respondent filed said suit for specific performance on agreement of sale dated 02.10.2006 and for permanent injunction. An exparte decree was

passed on 15.03.2007. The petitioner filed I.A.No.332 of 2008 to condone the delay of 330 days in filing the petition to set aside the exparte decree dated 15.03.2007. By order dated 28.01.2009, the learned Judge allowed the application on condition that the first petitioner shall pay a sum of Rs.7,000/- on or before 03.02.2009. The petitioner filed I.A.No.136 of 2009 under Section 148 C.P.C. for extension of one month time for payment of costs of Rs.7,000/-.

4. According to the first petitioner, he is a carpenter on daily wage, his family is in poverty, he has to maintain his family with his meagre income and therefore, he is not able to mobilise the amount of Rs.7,000/- within six days and prayed for one month time for payment of said amount. The learned Judge without considering the reason given by the first petitioner, dismissed the application in I.A.No.136 of 2009 on 04.02.2009. The learned Judge also dismissed I.A.No.332 of 2008 filed under Section 5 of the Limitation Act, to condone the delay of 330 days in filing the petition to set aside the exparte decree on the same day, on the ground that the first petitioner has not complied with the conditional order.

5. Against said order of dismissal dated 04.02.2009 made in

I.A.Nos.136 of 2009 and 332 of 2008 in O.S.No.9 of 2007, the present two Civil Revision Petitions are filed by the first petitioner.

6. First petitioner died and his legal heirs were impleaded as petitioners 2 to 4. During pendency of the Civil Revision Petitions, first respondent died and his legal heirs were impleaded as respondents 2 to 6 vide order of this Court dated 27.11.2017 made in C.M.P.Nos.14787 to 14789 of 2016 in C.R.P.No.763 of 2012 and C.M.P.Nos.14790 to 14792 of 2016 in C.R.P.No.764 of 2012.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. From the order of the learned Judge and materials available on record, it is seen that the learned Judge has imposed costs of Rs.7,000/- to be paid by the petitioners as a condition to condone the delay of 330 days in filing the petition to set aside the exparte decree dated 15.03.2007. The learned Judge has granted only six days time for payment of the said amount. When the first petitioner filed I.A.No.136 of 2009 for extension of time, on 04.02.2009, the learned Judge did not consider the reasons given by the petitioner

for extension of time and dismissed I.A.No.136 of 2009 by a non speaking order. The learned Judge also dismissed I.A.No.332 of 2008 for non payment of costs of Rs.7,000/-. The learned Judge has committed an irregularity in not extending time and not passing reasoned order.

9. For the above reason, both the Civil Revision Petitions are allowed and order dated 04.02.2009 made in I.A.No.136 of 2009 is set aside. The petitioners are directed to pay a sum of Rs.7,000/-, which was imposed as costs, within a period of four weeks from the date of receipt of a copy of this order. On such payment, application in I.A.No.332 of 2008 for condonation of delay in filing the petition to set aside the exparte decree dated 15.03.2007, is ordered. On complying the above said condition, the learned Judge is directed to decide the application to set aside the exparte decree and dispose the suit within three months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2017

Index:Yes/No

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V.M.VELUMANI,J.

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To

The Additional District Judge
(Fast Track Court No.I), Salem.

C.R.P.(NPD)Nos.763 and 764 of 2012
& M.P.No.1 of 2012



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