

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P. No. 2132 of 2013

and

M.P.No. 1 of 2013

Revathi

.. Petitioner

..Vs..

Pandian

.. Respondent

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 06.03.2013 made in I.A.No.112 of 2012 in O.S.No. 84 of 2005 on the file of the Sub-Court, Gingee.

For Petitioner : Mr.P.Dinesh Kumar

For Respondent : Mr.R.Rajarajan

ORDER

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The instant Civil Revision Petition has been filed challenging the Order dated 06.03.2013 passed by the learned Subordinate Judge, Gingee in I.A.No.112 of 2012 in O.S.No. 84 of 2005.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the 3rd defendant in the suit O.S.No.84 of 2005 which was filed by the respondent seeking specific performance of an agreement of sale dated 10.12.2004 against the petitioner as well as her mother Sulochana and her brother Ramachandran. The Trial Court passed an ex parte decree dated 18.02.2011 in favour of the respondent granting him the relief of specific performance of the agreement of sale. The petitioner who is the 3rd defendant in the suit filed I.A.No. 112 of 2012 in O.S.No. 84 of 2005 seeking to condone the delay of 416 days in filing an application to set aside the ex parte decree dated 18.02.2011. The petitioner in her affidavit filed in support of I.A.No.112 of 2012 has admitted that she has been served with the suit summons, but, has alleged that since she got married on 12.07.2006 and settled in Chennai along with her husband, her mother and brother assured her that they would contest the suit on her behalf also. Believing their representation and having trust in them, she was under the impression that the suit was properly defended on her behalf also. She has also averred in her affidavit that subsequently, she was not having good relationship with

her mother and her brother and therefore, they did not take care of the case properly on her behalf. For the said reasons, the petitioner has averred in her affidavit that an application to set aside the ex parte decree could not be filed on time and because of that, there was a delay of 416 days in filing the said application. A counter was also filed by the respondent disputing the contention raised by the petitioner in her affidavit filed in support of I.A.No. 112 of 2012 and he has submitted that no sufficient reason has been given by the petitioner for the condonation of delay. The Trial Court by its order dated 06.03.2003 in I.A.No. 112 of 2012 in O.S.No. 84 of 2005 dismissed the application filed by the petitioner on the ground that no sufficient reason has been given by the petitioner for condoning the delay of 416 days in filing the application to set aside the ex parte decree.

3. Aggrieved by the Order dated 06.03.2003 passed in I.A.No. 112 of 2012 in O.S.No. 84 of 2005, the instance revision has been filed by the petitioner who is the 3rd defendant in the suit.

Submissions of the learned counsels:

4. Heard Mr.P.Dinesh Kumar, learned Counsel for the petitioner and Mr.R.Rajarajan, learned Counsel for the respondent.

5. According to the learned counsel for the petitioner, the delay has been properly explained in the affidavit filed by the petitioner in support of I.A.No. 112 of 2012. According to him, the petitioner and her mother as well as her brother are the defendants in the suit O.S.No. 84 of 2005 filed by the respondent for specific performance of an agreement of sale. According to him, as seen from the affidavit, the petitioner got married and was living with her husband at Chennai and other places and therefore, she had entrusted the responsibility of defending the suit to her mother and her brother, but they failed to defend the suit on behalf of the petitioner. Therefore according to him, sufficient reasons have been given by the petitioner for the condonation of delay in filing an application to set aside the ex parte decree.

6. Per contra, learned counsel for the respondent would submit that till date, the remaining defendants have not filed any application to

set aside the ex parte decree and only the petitioner who is the 3rd defendant in the suit filed I.A.No. 112 of 2012 seeking to set aside the ex-parte decree. According to him, there is an enormous delay in filing an application to set aside ex parte decree and sufficient cause has not been shown by the petitioner for condonation of delay in the affidavit filed in support of I.A.No. 112 of 2012. Further he would contend that subsequent to the ex parte decree, an execution petition was also filed to execute the specific performance decree passed in favour of the respondent in O.S.No. 84 of 2005.

Discussion:

7. This Court has perused the affidavit filed in support of I.A.No. 112 of 2012 and the counter affidavit filed by the respondent in I.A.No. 112 of 2012 as well as the impugned order. As seen from the affidavit filed in support of I.A.No. 112 of 2012, the petitioner has admitted the receipt of the suit summons. She has also adopted the written statement filed by the remaining two defendants who are her mother and her brother respectively. Subsequently all the defendants failed to defend the suit and an ex parte decree came to be passed against them in favour

of the respondent. In order to substantiate the statement made by the petitioner in her affidavit filed in support of I.A.No. 112 of 2012 seeking to condone the delay of 416 days in filing the application to set aside the ex parte decree, oral evidence was let in by both the parties. The Trial Court has observed in the impugned order dated 06.03.2013 passed in I.A.No. 112 of 2012 that the petitioner during her cross examination, admitted that she did have the knowledge of the ex parte decree and also observed that having come to know about the ex-parte decree, the petitioner ought to have filed an application to set aside the ex-parte decree immediately. In the instance case, there was an enormous delay of 416 days in filing the said application. The Tribunal has also observed in the impugned order that the petitioner remained ex parte even in the execution petition filed by the respondent to execute the decree passed in O.S.No. 84 of 2005. Based on these observations, the Trial Court has rightly rejected the application filed by the petitioner to condone the delay of 416 days in filing the application to set aside the ex parte decree.

8. This Court is of the considered view that no sufficient reasons has been shown by the petitioner in her affidavit as well as in her oral

evidence for condoning the enormous delay of 416 days in filing the application to set aside the ex parte decree. Therefore, the Trial Court has rightly rejected the application.

Conclusion:

9. In the result, there is no merit in the instant revision. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

27.11.2018

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking orders

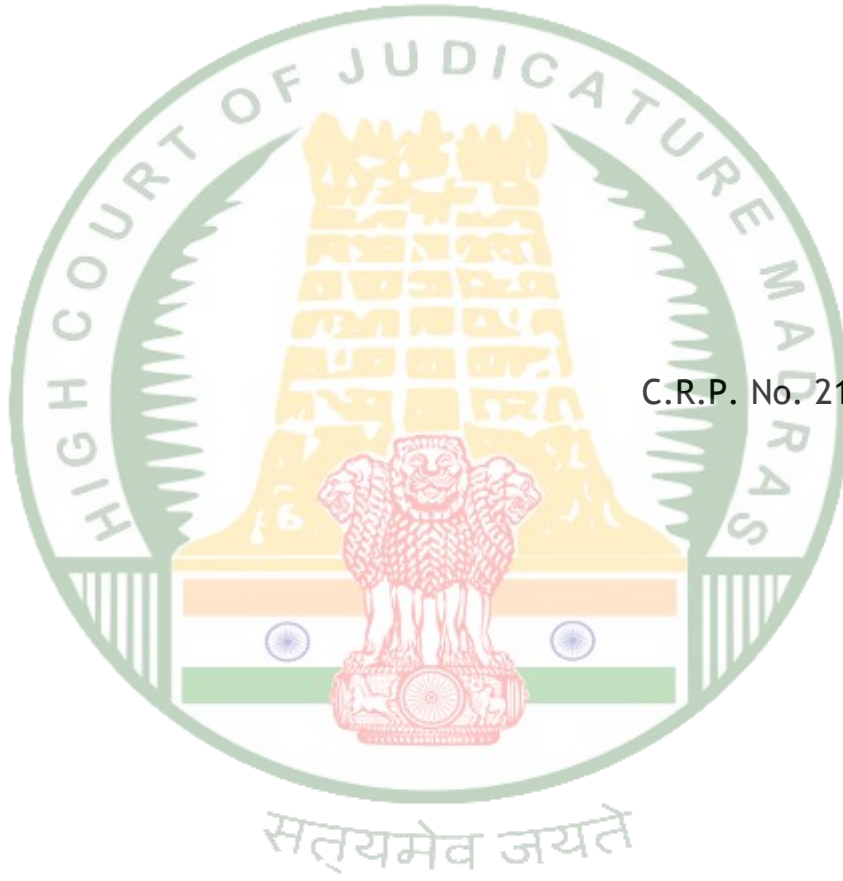
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To
The Sub-Court, Gingee.

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ABDUL QUDDHOSE, J.

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