

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4422 of 2014
and M.P.No.1 of 2014

A.K.Krishnamurthi Chettiar (Died)

1.A.K.Gopalakrishnan Chettiar

2.Savithri

3.P.Jayaram

4.P.Jaishankar

5.Poombavai

6.K.Sathishkumar

.. Petitioners

(Cause title accepted vide order dated 08.10.2014
made in M.P.No.1/2014 in C.R.P.SR.No.62389/2014)

Vs.

1.K.Kacharchand Jain

2.A.K.Kamalakannan Chettiar

3.A.K.Narayanamurthi Chettiar

4.D.Dharamchand Jain

5.P.Padma

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 16.04.2014 made in I.A.No.116 of 2013 in O.S.No.2506 of 2011 on the file of the XIX Additional District Judge, City Civil Court, Chennai.

For Petitioners : Mr.T.Sundar Rajan
For R1 : Mr.K.Sellathurai
For R2 & R3 : No appearance
For R4 : Mr.S.Balasubramanian
For R5 : Not ready in notice

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 16.04.2014 made in I.A.No.116 of 2013 in O.S.No.2506 of 2011 on the file of the XIX Additional District Judge, City Civil Court, Chennai.

2.The petitioners 1 to 4 are the defendants 4, 8, 9 and 10, petitioners 5 and 6 are the legal heirs of the deceased 3rd defendant and first respondent is the plaintiff in O.S.No.2506 of 2011 on the file of the XIX Additional District Judge, City Civil Court, Chennai. The first respondent filed the said suit for specific performance of agreement of sale dated 13.08.1995 entered into between the first respondent and defendants 1 to 6 or in alternative, direct the defendants 1 to 6 to refund the entire advance amount of Rs.3,25,000/- paid by the first respondent in pursuant to the

agreement of sale dated 13.08.1995 with interest at 24% per annum. The petitioners entered appearance through Advocate and subsequently did not file written statement. They were set exparte on 11.03.2013. The petitioners filed I.A.No.116 of 2013 under Order IX Rule 7 of C.P.C to set aside the exparte order passed against them on 11.03.2013. According to the petitioners, they have filed vakalat through their Advocate. Due to Advocates' boycott on the date of hearing, their Advocate did not appear and seeks time for filing written statement. Their non-appearance is only due to the reasons stated above. They have valid defence and prayed for setting aside the exparte order.

3.The first respondent even after taking number of adjournments for filing counter, did not file counter and did not appear. The first respondent was set exparte in I.A.No.116 of 2014 on 03.01.2014.

4.The learned Judge considering the averments in the affidavit filed in support of the above application, dismissed the application, holding that petitioners have not given any reason to set aside the exparte order.

5. Against the said order of dismissal dated 16.04.2014 made in I.A.No.116 of 2013 in O.S.No.2506 of 2011, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the petitioners as well as the first respondent and fourth respondent and perused the materials available on record.

7. From the materials available on record, it is seen that the petitioners were set exparte on 11.03.2013 for their non-appearance and failure to file written statement. According to the petitioners, they filed vakalat through Advocate and due to the Advocates' boycott, their Advocate could not appear on the date of hearing. The petitioners filed present application to set aside the exparte order along with the written statement. The suit is for specific performance of agreement of sale and petitioners were set exparte and no decree was passed. Considering the fact that petitioners have filed written statement along with the present application and suit is for specific performance of agreement of sale and no decree has been passed, in order to give an opportunity to

the petitioners to contest the case on merits, the impugned order of the learned Judge dated 16.04.2014 made in I.A.No.116 of 2013 in O.S.No.2506 of 2011 is set aside, directing the learned Judge to take the written statement filed by the petitioners on file and proceed with the suit.

8. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is initially filed in the year 2008 and subsequently transferred to Fast Track Court No.V, Chennai and re-numbered as O.S.No.2507 of 2011, the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order.

07.02.2018

Index: Yes/No
gsa

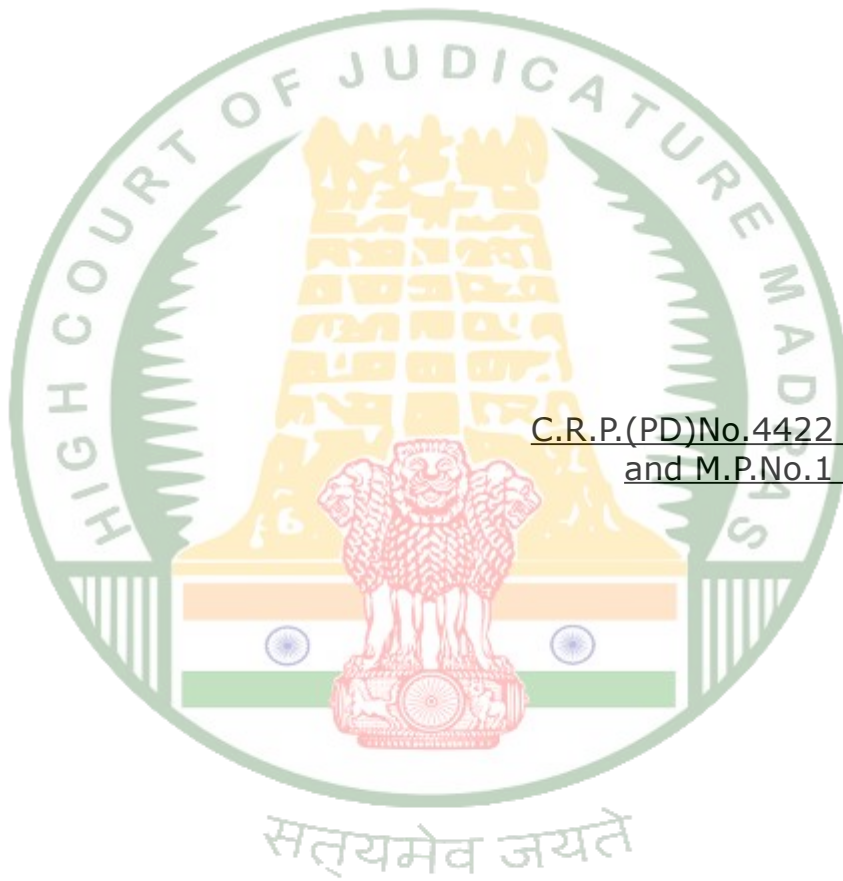
To

The XIX Additional District Judge,
City Civil Court, Chennai.

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V.M.VELUMANI, J.

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