



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2018
(Reserved on 13.02.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)Nos.1721 and 1722 of 2016
and
CMP(MD)No. 8375 of 2016

K.Subramanian ... Petitioner in both CRPs

vs.

S.Jeyaraman ... Respondent in both CRPs

COMMON PRAYER: Petitions filed under Section 115 of the Civil Procedure Code, against the order dated 18.04.2016 passed in I.A.Nos.233 and 234 of 2015 in O.S.No.48 of 2011 by the Additional District Court, Dindigul.

For Petitioner : Mr.S.Anand Chandrasekar for
M/s.Sarvabhauman Associates

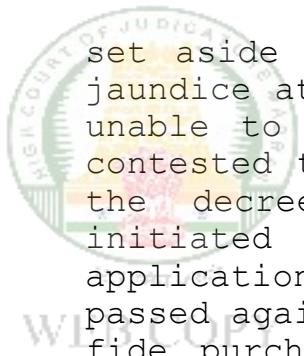
For Respondent/Caveator : Mr.R.Pandi Maharaja

COMMON ORDER

These Civil Revision Petitions have been filed against the order dated 18.04.2016 passed in I.A.Nos.233 and 234 of 2015 in O.S.No.48 of 2011 by the Additional District Court, Dindigul.

2. The revision petitioner is the 2nd defendant and the respondent is the plaintiff in O.S.No.48 of 2011 on the file of the Additional District Court, Dindigul. Originally, the said suit was filed by the respondent against one M.Kaliappan seeking the relief of specific performance of the sale agreement dated 21.07.2008 alleged to have been executed by M.Kaliappan in favour of the respondent or alternatively for refund of Rs.10 Lakhs paid as sale advance amount by the respondent. The revision petitioner purchased the suit property from the 1st defendant/M.Kaliappan on 05.05.2011 prior to the institution of the suit by the respondent. After filing of the suit, the petitioner was impleaded as 2nd defendant in the suit. Due to non filing of the written statement, the petitioner/2nd defendant was set *ex-parte* on 14.09.2012 and thereafter, on 17.11.2012, the 1st defendant was also set *ex-parte* and ultimately, *ex-parte* judgment and decree was passed in the suit on 17.11.2012.

3. The petitioner/2nd defendant filed applications in I.A.Nos.233 and 234 of 2015 praying to condone the delay of 395 days in filing the application to set aside the *ex-parte* decree and to



set aside the *ex-parte* decree, stating that he was suffering from jaundice at the relevant point of time, on account of which, he was unable to meet his Counsel and give instructions. The respondent contested the condone delay application contending that pursuant to the decree, he deposited the balance sale consideration and initiated execution proceedings; the 1st defendant filed an application in I.A.No.65/2013 to set aside the *ex-parte* decree passed against him which was dismissed; the petitioner is not a bona fide purchaser; the defendants collusively created the sale deed dated 05.05.2011 and that the petitioner has not provided the details of treatment of the illness suffered by him.

4. The Trial Court by impugned order dated 18.04.2016 dismissed I.A.No.233 of 2015 holding that the 1st defendant whose application to set aside the *ex-parte* decree was dismissed which attained finality, has instigated the petitioner/2nd defendant who is his relative to prevent the respondent from enjoying the fruits of the decree. The Court below has further held that though the petitioner has stated that he was suffering from jaundice, chickenguniya and arthritis which restricted his movement, due to which, he was not in a position to move out, he has not specified the point of ailments, duration of ailment and cessation etc. The Trial Court has also held that the Doctor's evidence (PW2) shows that the petitioner is capable of travelling 50 kms for treatment, however, the petitioner had kept quiet for two years and only after the commencement of execution proceedings, he has come forward with the petitions to condone delay and to set aside *ex-parte* decree. So saying, the Trial Court by impugned order dated 18.04.2016 dismissed I.A.Nos.233 and 234 of 2015 in O.S.No.48 of 2011. Aggrieved by the said orders, these revision petitions have been filed.

5. Learned Counsel for the petitioner would submit that the petitioner purchased the suit property from the 1st defendant on 05.05.2011 prior to the initiation of the suit, as such, he has independent title over the suit property subject to the respondent proving his claim on the basis of the suit sale agreement and that the failure on the part of the 1st defendant to get the *ex-parte* decree passed against him set aside will not bar the petitioner from questioning the validity of the *ex-parte* decree passed against him as well as to take steps to set it aside.

6. Learned Counsel for the petitioner further contended that the suit has not been disposed of on merits. As per the judgments of the Hon'ble Supreme Court, even an *ex-parte* judgment should show application of minimum requirement of consideration of pleadings, issues, evidence and relief sought for. Further, as per Section 2 (9) read with Order XX Rule 4 CPC, *ex-parte* judgment should contain reasons. Therefore, the learned Counsel submitted that the impugned orders are liable to be set aside.

7. It is further contended that the petitioner has proved the fact that he was suffering from arthritis and taking treatment during 2012 by examining the Doctor who treated him as PW2 and by marking Ex.P7-Medical Certificate issued by PW2. The petitioner has also marked Exs.P1 to P5 which are documents to show that the said



treatment continued till 2015. However, instead of taking liberal approach by considering the above documents and the evidence of PW2, the Trial Court has adopted a rigid and pedantic approach and dismissed the present interlocutory applications. Therefore, the impugned orders are liable to be set aside.

8. In support of his contention, learned Counsel for the petitioner has relied on the following judgments:-

i) Ajay Kumar Gulecha vs. J.Vijayakumar and Uttamchand Gulecha reported in 2015 (1) CTC 811.

ii) S.Arul Dhas vs. F.Hubert & another reported in 2015-3-L.W. 241.

iii) Shantilal Gulabchand Mutha vs. Tata Engineering & Locomotive Co.Ltd., and another reported in 2013-3-L.W. 748.

iv) M/s.Meenakshisundaram Textiles vs. Valliammal Textiles Ltd., reported in 2011-3-L.W 80.

9. Learned Counsel for the respondent submitted that the petitioner has not stated any details regarding the alleged treatment for the ailment suffered by him and in Ex.P1-series of prescriptions, one prescription alone has been issued in the name of the petitioner and rest of them have been issued in the name of one Mani and further Ex.P1 series are of the year 2015 which has nothing to do with the ailment allegedly suffered by the petitioner during 2012 and Ex.P3-scan report was also taken in 2015.

10. Learned Counsel for the respondent further submitted that Ex.P6-medical certificate clearly establishes that the petitioner had taken treatment only one day on 11.07.2012 and not months together as alleged by him. It is further contended that Ex.P7-medical certificate issued by PW2 itself falsifies the case of the petitioner as PW2 in his cross examination had deposed that from Palani, the petitioner used to come to the hospital at Dharapuram to take treatment as outpatient. The distance between Palani and Dharapuram and Palani and Dindigul is almost same. Therefore, it is clear that the petitioner who is capable of taking treatment as outpatient at Dharapuram which is situated 50 kms away from his place, has stated the reason for the delay as if he could not move to any place due to the above ailment.

11. It is also contended that the delay has not been satisfactorily explained and the reasons for delay adduced by the petitioner were disproved through the witness of the petitioner and therefore, the learned Judge has rightly dismissed the interlocutory applications which does not warrant any interference by this Court.

12. In support of his contention, learned Counsel for the respondent has relied on the following judgments:-

i) Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649

ii) H.Dohil Constructions Co.P.Ltd., vs. Nahar Exports Ltd., reported in (2015) 1 SCC 680

<https://hcservices.ecourts.gov.in/hcservices/>
iii) Sundar Gnanaolivu vs. Rajendran Gnanaolivu reported in 2003-1-L.WW 585



iv) K. Madhavan vs. K.N. Sekar (CRP (NPD) No. 1727 of 2013 Decided on 29.07.2013)

v) Kaliappan vs. S. Jeyaraman (CMA (MD) No. 1121 of 2014 dated 03.03.2015)

13. Heard the learned Counsel for the petitioner as well as the respondent and perused the materials available on record.

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14. It is seen that the petitioner has filed the above interlocutory applications to condone the delay of 395 days in filing a petition to set aside the *ex-parte* and also to set aside the *ex-parte*. The suit was filed by the respondent herein for the relief of specific performance originally against one M. Kaliappan and after framing of issues when the case was posted for trial, the petitioner was impleaded as second defendant on the ground that he has subsequently purchased the property. Thereafter, in the consequential amendment petition, the petitioner herein entered appearance through a Counsel and the petitioner took several adjournments for written statements and finally remained *ex-parte* without filing any written statements.

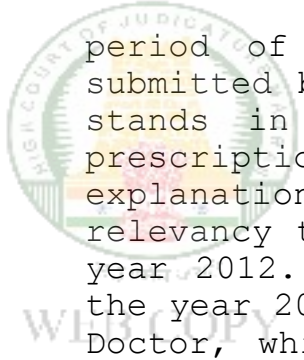
15. It is also seen from the records that when the trial was commenced, it was contested only by the first defendant and the Counsel for the first defendant, at the stage of cross examination of P.W.1, reported no instructions and despite several adjournments, the first defendant was also not present and therefore, he was also set *ex-parte*, followed by which, an *ex-parte* decree was passed.

16. It is also seen that the petitioner, during his cross examination as P.W.1, admitted that he appointed a Counsel for conducting the suit, but claims no knowledge about the date on which he appointed the Counsel. Therefore, this Court is of the view that it is not the case of the petitioner that he had no knowledge about the suit proceedings.

17. Perusal of the affidavit filed by the petitioner before the Court below would show that the petitioner has stated the reasons for his non appearance, but, has not stated any reason for the delay of 395 days. It is in the stage of cross examination, the first defendant has admitted that he is none other than the nephew of the petitioner herein/second defendant. Earlier, the first defendant has filed a similar petition to set aside the *ex-parte*, which was dismissed and the first defendant has went upto Special Leave Petition before the Apex Court, which was also dismissed.

18. In the meantime, execution petition came to be filed by the respondent/plaintiff. It was at this juncture, the petitioner herein, who is the nephew of the first defendant has filed the impugned interlocutory applications only to prevent the respondent/plaintiff from enjoying the fruits of the decree, which, in my considered opinion, is nothing but a abuse of process of law.

19. It is seen that the petitioner was set *ex-parte* on 14.09.2012 and the suit was decreed on 17.11.2012, i.e., after a



period of two months. On a closure look on the medical bills submitted by the petitioner, it is seen that only one prescription stands in the name of the petitioner, K.Subramanian, and some prescriptions are issued in the name of Mani, for which, there is no explanation. Moreover, the bills are of the year 2015, which has no relevancy to the alleged ailments suffered by the petitioner in the year 2012. Ex.P3 is the Scan report, which has also been taken in the year 2015. Ex.P6 is the certificate allegedly issued by a Siddha Doctor, which does not contain any particulars as to how long the petitioner was advised to take rest. The Doctor, who issued the said certificate, was not examined.

20. Ex.P7 - medical certificate plays a vital role, which even falsifies the story of immobility suffered by the petitioner, because, PW2 has made it very clear that during the period mentioned in Ex.P7, the petitioner used to take treatment only as out patient and he used to come to the Hospital from Palani. Admittedly, the Hospital of PW2 situate at Dharapuram. Even as per the admitted case of the petitioner, as per Ex.P7, the petitioner had taken treatment only as out patient and therefore, he has travelled to Dharapuram from his place, Palani. Therefore, when the petitioner was able to take medical treatment as out patient, by travelling almost 50 kms., this Court is of the view that the reasons assigned by the petitioner for his immobility lacks merits, which was clearly and categorically analyzed by the Court below.

21. In such a view of the matter, this Court is the stern opinion that judgments relied upon by the petitioner have no relevancy to the present case on hand and the learned Judge has passed a detailed order, after careful scrutiny of all the material documents, which does not warrant any interference at the hands of this Court. Therefore, the present civil revision petitions are liable to be dismissed.

22. In result, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Additional District Judge,
Dindigul.

+1cc to Mr.R.PANDI MAHARAJA, Advocate, SR.No. 60980

+1cc to M/S.SARVABHAUMAN ASSOCIATES, Advocate, SR.No.60572

CRP (PD) (MD) Nos.1721 and 1722 of 2016
10.04.2018

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