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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD)No.2544 of 2016

and

C.M.P. (MD) .No.11969 of 2016

Karpagam

..Revision Petitioner/Respondent/Plaintiff

vs.

Janakiammal

.. Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.11.2016 in I.A.No.96 of 2013 in O.S.No.15 of 2008 on the file of the learned Subordinate Judge, Sivagangai.

For Petitioner : Mr.ARL.Sundaresan  
Senior Counsel  
for Ms.AL.Ganthimathi

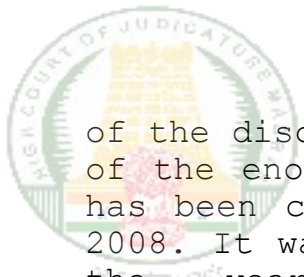
For Respondent : Mr.S.Srinivasa Raghavan

#### ORDER

The revision petitioner Karpagam filed O.S.No.15 of 2008 on the file of the Sub Court, Sivagangai against the respondent Janakiammal seeking the relief of specific performance. The suit was decreed on an exparte basis on 14.07.2009. To set aside the said exparte judgement and decree, the respondent herein filed IA under Order IX Rule 13 CPC. However, there was a delay of 1224 days in filing the said application. To condone the same, I.A.No.96 of 2013 was filed. The learned Trial Judge, by order, dated 10.11.2016 allowed the said IA. Questioning the same, this Civil Revision Petition has been filed by the plaintiff.

2. Heard the learned Senior Counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

3. The learned Senior Counsel appearing for the revision petitioner contended that the delay that occurred in this case is too inordinate and that it has not been properly explained. He would point out that while in the affidavit filed in support of the condone delay petition, the respondent herein has pleaded that she was unwell and that she has not collected the information at the right time from the counsel, but, when she was in the witness box, she chose to blame the counsel. Hence, according to the learned Senior Counsel, this Court should disbelieve the respondent in view



of the discrepancy in her stand. He also pointed out that on account of the enormous delay caused by the respondent, serious prejudices has been caused to the plaintiff. The suit was filed in February, 2008. It was decreed in July, 2008. Execution petition was filed in the year 2011. Pursuant to the order made in the execution proceedings, sale deed was also executed in favour of the plaintiff. Thus much water has flown under the bridge to put the clock back.

5. Eventhough each and everyone of these contentions are having considerable force and weight, the conscience of the Court was deeply troubled a valuable property is sought to be grabbed for a song. The learned counsel for the respondent produced photographs of the property in question. That they are true photographs is not in dispute. The property is spread over 17 cents. Though the property is located only in a village, it includes a storeyed house. The sale consideration is fixed at Rs.2,75,000/-. Eventhough the sale agreement is dated 01.03.2006, it is impossible that for the said amount, the property in question could ever purchased. Even by a conservative estimate, the property would easily fetch up to Rs.20,00,000/- even in the year 2006. The learned counsel for the respondent would further contend that it was basically a loan transaction between the parties and that as per the usual practice prevailing in the said area, the lender takes a sale agreement in his or her name, when advancing the money. This Court is of the view that this version appeared to be rather probable. But, this observation is made only for the purpose of passing order in this Civil Revision Petition and this will not cost any shadow, when the matter is taken up for trial.

6. This Court also wanted to know that as to how the suit has been decreed. Therefore, it called upon the learned counsel for the respondent to produce a copy of the judgment passed in the suit. When the matter was taken up for hearing today, the learned counsel produced a copy of the judgment dated 14.07.2009 made in O.S.No.15 of 2008. The judgement is too cryptic. It only states that PW1 is present and that since the defendant is absent, he has been set exparte and that the suit is decreed with costs. It does not say anything more.

7. The Honourable Division Bench of the Madras High Court in the decision reported in 2011 (3) LW 80 had held as follows:

*"19. Similar view has been taken by the Allahabad High Court in the case of Commissioner of Income Tax v. Surendra Singh Pahwa and others, AIR 1995 All.259, wherein the Court held as under:*

*"5. Having heard the learned counsel for the parties and having perused the judgment dated 5.1.1994, I am of the view that it cannot be sustained. Even an exparte judgment should satisfy the description of 'judgment' as laid down in Order 20, Rule 4(2) C.P.C., which visualises that the judgment of a Court other than the Court of Small Causes "shall contain concise*



statement of the case, points for determination, decision and the reasons for such decision". A 'judgment' unsupported by reasons is no judgment in the eye of law. It is well settled that reasons are the links between the material on record and the conclusion arrived at by the Court. Mere fact that the defendant absented himself on the date of hearing and the suit proceeded *ex parte*, did not by itself entitle the plaintiff to get a decree in his favour. The Court was under an obligation to apply its mind to whatever *ex parte* evidence or affidavit filed under Order 19 of the Code is on the record of the case, and application of mind must be writ large on the face of record. This is possible only if the Court directs itself to whatever material is on record of the case, analyses the same and then comes to any conclusion on the basis of evidentiary value of the *ex parte* evidence or affidavit brought on record by the plaintiff...."

8. The suit on hand is a suit for specific performance. The relief cannot be granted for the asking. It is for the Court to exercise its discretion in granting the relief taking into account all the prevailing circumstances. A suit for specific performance could not have been decreed in this manner. I hold that the judgment dated 14.07.2009 made in O.S.No.15 of 2008 on the file of the Sub Court, Sivagangai cannot be termed as a judgment at all in the eye of law. It is such a judgment that is now sought to be set aside more than anything else. The Court below exercised its discretion for condoning the delay occurred in filing the set aside petition. This Court does not propose to interfere with such an order for the reasons set out already. Hence, the order impugned in this Civil Revision Petition is sustained. The Court below shall number the set aside application and allow the same also.

9. But then, the respondent will have to be necessarily put on terms. The suit agreement is for a sum of Rs. 2,75,000/-. The learned counsel for the respondent would contend that the actual amount borrowed was only Rs.1,00,000/-. But an inflated figure has been shown in the agreement. But then one cannot be permitted to speak contrary to the terms set out in a written agreement. Therefore, the respondent is directed to deposit a sum of Rs.2,50,000/- with interest at the rate of 12% from the date of agreement till date. This amount shall be deposited within a period of three months from the date of receipt of a copy of this order, before the Court below to the credit of the Suit. If the respondent fails to deposit the amount as directed herein, the defence of the respondent will be struck off. It is again reiterated that the Court below shall decide the suit based on the evidence available before it, totally uninfluenced by any of the observations made in this order. Furthermore, this Court directs the Sub Court, Sivagangai to dispose of the suit in O.S.No.15 of 2008 within a period of nine months from the date of receipt of a copy of this order.



10. This Civil Revision Petition is dismissed with these directions. No Costs. Consequently, connected miscellaneous petition is dismissed.

Sd/

Assistant Registrar(CS-III)

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/True copy/

Sub Assistant Registrar(CS-III)

To

1. The Subordinate Judge,  
Sivagangai.

2. The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 Copies)

+1cc to Mr.A.L.GANTHIMATHI, Advocate, SR.No.93780

+1cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No.93767

C.R.P.(MD)No.2544 of 2016  
31.10.2018

PJL

KK/SV/SAR-3/01.11.2018/4P-6C