

IN THE HIGH COURT OF JUDICATURE AT MADRAS**ORDER RESERVED ON : 01.07.2019****ORDER PRONOUNCED ON : 15.07.2019****CORAM****THE HONOURABLE Mr. JUSTICE C. SARAVANAN****C.R.P.(NPD).No.1037 of 2015
and
M.P.No.1 of 2015**

- 1.V.M.Raji (died)
- 2.R.Rani
- 3.Dhivakar
- 4.Dhinakaran
- 5.Deepan chakravarthy

(Appellants 2 to 5 brought on record
as legal representatives of the deceased
sole appellant viz., V.M.Raji vide court
order dated 19.06.2019 made in
CMP.Nos. 15189 to 15191 of 2018 in
CRP NPD 1037 of 2015 (CSNJ))

... Petitioners

Vs.

Anthoniammal

...Respondent

PRAYER Civil Revision Petitions filed under Section 115 of Civil
Procedure Code as against the fair and decreetal order dated
22.12.2014 made in I.A.No.62 of 2014 in O.S.No.482 of 2009 on
the file of Subordinate Court, Tambaram.

For Petitioners : Mr.A.Adithya for M/s.Paul and Paul

For Respondent : M/s.C.Harini

ORDER

The petitioners are aggrieved by the impugned fair and decreetal order dated 22.12.2014 in I.A.No.62 of 2014 in O.S.No.482 of 2009 and therefore, they have filed the present Civil Revision Petition.

2.By the impugned order, the Court has declined the condone delay of 1198 days in filing application to set aside the exparte order.

3.The above suit was filed by the respondent for declaration and for recovery of possession. When the case was in the list, there was no representation on behalf of the petitioner and therefore, an exparte decree came to be passed on 11.06.2010.

4.Thereafter, the respondent/plaintiff filed E.P.No.149 of 2013, where notice was ordered, which was received by the petitioner on 25.10.2013. Thereafter, the petitioner filed I.A.No.62 of 2014 to condone a delay of 1198 days in filing the application to set aside the exparte orders passed on 11.06.2010 along with his written statement. The reasons given in the affidavit are that the petitioner had handed over the papers to his brother-in-law, who

failed to intimate to him about the further outcome and therefore, he was unaware and further proceedings.

5.The Court below has dismissed the application on the ground that the claim of the petitioner that he was an illiterate cannot be accepted when he has signed in English and he had also filed a caveat petition and that the petitioner was employed as a driver in Tamil Nadu Transport Corporation and therefore it cannot be accepted the petitioner was an illiterate person. The Court has also observed that the petitioner has not filed any documents to substantiate his ownership over the property.

6. Aggrieved by the impugned order, the petitioner has filed the present Civil Revision Petition. The petitioner is now represented his legal representatives as he has since deceased.

7.The learned counsel for the petitioners submits that there was neither averments and the order does not state about the facts of the petitioner that he was employed as a driver in the Transport Corporation. Be that as it may, the learned counsel for the petitioner placed reliance on the following two decision of the Hon'ble Supreme Court in the case of **Shantilal Gulabchand**

Mutha Vs Tata Engineering and Locomotive Company Limited and another, reported in Civil Appeal No.6162 of 2005. Particularly attention was drawn to paragraph no 4 and 6, wherein, it was held as follows:

"4. It is a matter of Court's satisfaction and therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement. However, if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The power of the Court to proceed under Order VIII, Rule 10 CPC is discretionary. The Court further held that judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. Therefore, the judgment should be self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. The court further held as under:-

"Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved."

6. In view of the above, it appears to be a settled legal proposition that the relief under Order VIII Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which need to be proved in spite of deemed admission by the defendant, and the Court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed."

8. The learned counsel also drew the attention to another decision of the Hon'ble Supreme Court rendered in the case of

Balraj Taneja and another Vs. Sunil Madan and another

reported in (1998) 8 SCC 396, wherein, in paragraph 42 and 45, it was held as follows:

"42. "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment.

"Shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision".

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

45. "Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the

provisions of the Code or at least set out the reasoning by which the controversy is resolved.

The Court further held that even if paragraph 46:

"Even if the definition in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "suit decreed" or "Suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained."

9.Per contra, the learned counsel appearing for the respondents submitted that the the impugned order passed by the lower Court does not require any interference as it is well reasoned. The petitioner was educated as he has signed the papers in English and that it was the duty of the petitioners to follow the proceedings and cannot put blame on others for the consequences arising out of the exparte decree.

10.The learned counsel for the respondent drew the attention

to the decision of this court in the case of **Murugan and another Vs. K.Elumalai and another**, reported in 2010-4-L.W.180, wherein, in paragraph no 8, the Court held that the defence raised that the petitioners were busy in their business and hence, could not file a petition under Order 9 Rule 13 cannot be accepted. In that case, after having received the summons, the petitioner/defendant had not bothered to engage a counsel and was therefore set exparte. Under these circumstances, the Court dismissed the application and the Civil Revision Petition before this Court was also dismissed with the above observations.

11.The learned counsel also referred yet another decision of this Court in the case of **Muthukumar vs M.Pari** reported in 2015-3-L.W.319, wherein, in paragraph no.12, the Court held that there was a delay of 8 ½ years in filing the application to set aside the exparte decree by the defendant. The reason stated that he suffered a loss in his business and had to go away from Paramakudi and was working as a coolie in Chennai and Coimbatore or was not living with his family which was not acceptable. The Court held that after the limitation has crossed, the Court can look into the explanation offered by the petitioner under Order 8 Rule 10. Paragaraph 25, for the decision referred in the case of

Muthukumar cited (supra) was invited which reads as under:

“Reipublicae up sit finis litium”, the law of limitation is founded on public policy. It is for the general welfare that a period be put to litigation. Certainly, the rules of limitation are not meant to destroy the rights of parties. But the dilatory tactics adopted by one party should not put the opposite party to prejudice and peril. The lapse of time that too after more than 8 years should not be light heartedly disturbed.”

12. Though, reason given in the affidavit filed in support of the petition to condone the delay is not adequate, the fact that ex parte decree has been passed without any reasons is troubling. Therefore, I am inclined to set aside the impugned order and allow I.A.No.62 of 2014 subject to cost of Rs.15,000/-. The Subordinate Court, Tambaram shall take up the case on merits and dispose the same within a period of nine months from the date of receipt a copy of this order on payment of cost to the respondent as stipulated below.

13. The petitioners shall therefore deposit a sum of Rs.15,000/- as cost to the credit of the above suit within a period of

four weeks from the date of receipt a copy of this Order.

C.SARAVANAN., J.

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14.On such deposit, the respondent shall be entitled for payment out. Thereafter, the Court shall proceed to dispose the suit on merits in accordance with law within the period stipulated above.

15.In the result, the present Civil Revision Petition stands allowed with cost. Consequently, connected miscellaneous petition is closed.

15.07.2019

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To

1.The Subordinate Judge,
Udumalaipettai.

2.The Section Officer,
V.R.Section, High Court, Madras.