

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2019
Pronounced On	30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.3738 of 2015

and

M.P.No.1 of 2015

R.Elangaovan

.. Petitioner

VS

A.Kaliaperumal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.23 of 2013 in O.S.No.8 of 2002 on the file of Sub Court, Mannargudi dated 19.03.2015.

For Petitioner : Mr.A.Elango

For Respondent : Mr.S.Udaya Kumar

WEB COPY
ORDER

The petitioner is aggrieved by the impugned order passed in I.A.No.23 of 2013 in O.S.No.8 of 2002. By the impugned order, the court has allowed the above application filed by the respondent/defendant under section 5 of the Limitation Act. The court has condoned a delay of 3630

days in filing application to set aside ex parte decree passed on 26.03.2002.

2.The application was allowed on the ground that though substituted service of summons was ordered on the respondent through the international edition of the newspaper “Dinathanthi”, the petitioner/plaintiff had effected the substituted service of summons in the above suit in the local edition of the said newspaper.

3.The respondent/defendant was a resident of Singapore when the above suit was instituted for specific performance. According to the petitioner, though the suit summons was served on the respondent/defendant, the acknowledgment card was not received. It was only under these circumstances, the court was permitted the petitioner/plaintiff to serve summons through substituted service of summons on the respondent/defendant through paper publication.

4.Though, elaborate arguments were advanced on the merits and conduct of the respondent/defendant, fact of the matter remains is that there is no proof of service of summons in the above suit on the respondent/defendant.

5.The petitioner/plaintiff failed to take out substituted service of

summons through newspaper in an international edition of the said newspaper. Instead, substituted service of summons was effected through local publication.

6. Therefore, even though there is a delay of 3630 days in filing the application to condone delay in filing application to set aside ex parte decree, respondent/defendant had made of sufficient cause for condoning the delay before the lower court. In my view, the lower court has properly exercised the discretion while allowing the application filed by the respondent/defendant. Therefore, I do not find any reasons to interfere in the present civil revision petition. Accordingly, the present civil revision petition is liable to be dismissed.

7. Since 3rd party rights in respect of the suit schedule property has also been created by the petitioner/ plaintiff, I am of the view, to meet the ends of justice, the lower court shall suo motu implead the said purchaser in the said suit before proceeding further with the trial. The parties are directed to file memo to that effect and give particulars to the court. It shall be the duty of the respondent/defendant to take steps to serve summons on the proposed party.

C.SARAVANAN, J.

kkd/jen

8. It is noticed that the suit is of year 2002 and 17 years have lapsed since then. Therefore, the court is directed to take up the case and dispose the same within a period of twelve months from the date of receipt of a copy of this order in accordance with law.

9. The present Civil Revision Petition therefore stands dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

30.07.2019

Index :Yes/No

Internet :Yes/No

kkd/jen

To

1.The Sub Court, Mannargudi.

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

Pre-delivery order in

C.R.P.(NPD).No.3738 of 2015 and
M.P.No.1 of 2015