

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P.(NPD)No.2889 of 2018
and
C.M.P.Nos.21357 and 16940 of 2018

N.Sudhakaran .. Petitioner

Versus

1.K.P.Moorthy

2.K.Premkumar

3.M.Venkatesan

4.M.Ranganathan

5.Marakka

6.Chandrappa

7.Gayathri

8.Shanmugam

9.Jayamma @ Jayammal .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 18.12.2017 in I.A.No.153 of 2015 in O.S.No.6 of 2009 on the file of Additional District Judge, Hosur.

For Petitioner : Mr.K.S.Vaithianathan
For Respondents : Mr.S.R.Sundar, for RR1 & 2

ORDER

The above civil revision petition arises against the order passed by the learned Additional District Judge, Hosur in I.A.No.153 of 2015 in O.S.No.6 of 2009, condoning the delay of 1736 days in filing the petition to set aside the ex-parte decree dated 18.01.2010 as the procedure has not been followed.

2.The facts in brief are as follows:-

The revision petitioner herein had filed the suit for specific performance against the respondents herein. It is the case of the revision petitioner that the substituted summons have been taken to the respondents and since they had refused to receive the summons, it was affixed on the door of the house of the respondents and thereafter, an ex-parte decree came to be passed on 18.01.2010 and 1736 days later, the impugned petition came to be filed by the eighth and ninth defendants. In the said application, they had clearly stated that the summons was never served on them, the planitiff has allegedly manipulated the records relating to the service of summons. They would further contend that on merits, the third respondent had

cancelled the general power of attorney in favour of respondents 1 and 2 and thereafter, she had executed the general Power of Attorney in favour of sixth respondent and a portion of suit property was sold to the said defendants 8 and 9 and therefore, they would contend that being interested parties, not having been heard, the order of ex-parte decree has to be set aside. They would further submit that they have come to know about ex-parte decree only on receiving the notices in E.P.No.164 of 2014, and immediately on receiving the said notice, they engaged the service of counsel, who on inspection of the documents and on examining the Court records came to know about the ex-parte decree and filed the said application on 18.11.2014.

3.In the said application, detailed counter was filed by the plaintiff stating that the petitioners were very much aware about pendency of the suit and they have deliberately kept away from the proceedings after obtaining the ex-parte decree. The plaintiff also deposited the balance sale amount into Court and therefore, to defer the case erroneous reasons have been given to condone the delay. Since there is no sufficient reasons given for condoning the delay, the petition deserves to be dismissed.

4. During the enquiry in the said application, on behalf of the respondents 1 and 2 herein, they have examined the ninth defendant as P.W.1. On the side of the revision petitioner, the petitioner was examined as R.W.1 and one Venkatesan and Ranganathan as R.W.2 and R.W.3. The Court witness has been examined as C.W.1 and his report was marked as Ex.C1. The learned Judge after hearing both parties and perusing the evidence has come to the conclusion that the provisions of Order V Rule 17 & 18 have not been followed and it cannot be presumed that the services on the respondents 1 and 2 namely defendants 8 and 9 have been effected in the manner known to law. The learned Judge has also found some discrepancies in the evidence between RW1 to RW3 and Central Nazir/C.W.1 & Ex.C1. Taking into account of these factors, the learned Judge has condoned the delay, which is the subject matter of challenge before this Court.

5. Heard learned counsel for the petitioner and learned counsel for the respondents.

6. The entire case revolves on the service being effected on the defendants. From the order of the learned Additional District Judge, Hosur, it appears that the manner in which summons were served assumed significance because defendants 8 and 9 have taken a

categorical stand that the summons allegedly served on them were manipulated and that the provisions under Order V Rule 17 & 19 have not been followed. The learned Judge on perusing the records had also found truth in the above contention.

7. In view of the above, I do not find any infirmity in the order passed by the learned Additional District Judge, Hosur. Further the perusal of the judgment, which has been passed ex-parte, would also show that it was a one line judgment.

8. Considering the above facts, this Court is not inclined to set aside the order passed by trial Court. The learned Principal District Judge, Krishnagiri is directed to dispose of the suit, which is of the year 2009, within a period of six months from the date of receipt of a copy of this order.

9. The civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.03.2019

Index: Yes/No
AT

P.T.ASHA, J.

AT

To

1.The Additional District Judge,
Hosur.

2.The Principal District Judge,
Krishnagiri



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