

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.3362 of 2014

S. Naseer

...

Petitioner

Vs

P.C. Jain

...

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and docket order dated 07.10.2013 made in I.A. No.833 of 2013 in O.S.No.744 of 2004 passed by the Learned District Munsif, Alandur by allowing the above Revision Petition.

For Petitioner : Mr.S. Kanmani Annamalai

For respondent : Mr.P.Krishnaswamy

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 07.10.2013 passed by the learned District Munsif, Alandur in I.A. No.833 of 2013 in O.S. No.444 of 2002.

Brief facts leading to the filing of the instant Civil Revision**Petition under Article 227 of the Constitution of India :**

2. The petitioner is the defendant in the suit and the respondent is the plaintiff. The respondent filed a suit for eviction, arrears of rent and for damages against the petitioner in O.S. No.444 of 2002 on the file of the Additional Sub Court, Chenglepet.

3. A written statement was also filed in the suit by the petitioner / defendant denying that he had voluntarily executed a sale deed in favour of the respondent / plaintiff and he has averred in the written statement that only as a security for availing a loan from the respondent / plaintiff the alleged document was executed. Issues were also framed by the Trial Court and the suit O.S. No.444 of 2002 was posted for trial. Thereafter, due to enhancement of pecuniary jurisdiction, the suit was transferred from Additional Sub Court, Chenglepet to Additional District Munsif, Alandur and the suit was re-numbered as O.S. No.744 of 2002. The suit after transfer to the file of the District Munsif, Alandur was dismissed for default on 03.09.2009. I.A. No.833 of 2013 was filed by the respondent / plaintiff to condone the delay of 1294 days in filing an application to restore the suit, which was dismissed for default on 03.09.2009.

4. The reasons given in the affidavit filed in support of I.A. No.833 of 2013 by the respondent / plaintiff is that originally, the suit was before the Additional Sub Court at Chenglepet in O.S No.444 of 2002 and subsequently the suit got transferred to the District Munsif Court at Alandur and re-numbered as O.S. No.744 of 2004. It is the case of the respondent / plaintiff as seen from the affidavit filed in support of I.A. No.833 of 2013 that no notice was served on him, as regards the transfer of suit from Sub Court, Chenglepet to Additional Munsif Court, Alandur. In his affidavit, he has also stated that the case was posted for trial on 03.09.2009 without notice to the respondent / plaintiff and therefore, he could not appear on 03.09.2009, when the suit was posted for trial.

5. It is also stated that only in the 3rd week of April 2013, the respondent / plaintiff came to know that the suit was dismissed for default on 03.09.2009. Having come to know about the dismissal of the suit for non-prosecution, the respondent / plaintiff has filed I.A. No.833 of 2013 seeking to condone the delay of 1294 days in filing an application to restore the suit in O.S. No.444 of 2002, which was dismissed for default on 03.09.2009.

6. A counter affidavit has also been filed by the petitioner/ defendant stating that no sufficient reasons have been given by the respondent / plaintiff for condoning the inordinate delay. By order dated 07.10.2013, the Trial Court allowed I.A. No.833 of 2013 filed by the respondent and condoned the delay of 1294 days in filing the application to restore the suit, which was dismissed for default on 03.09.2009, on condition that the respondent / plaintiff pays a sum of Rs.2000/- as costs to the petitioner / defendant on or before 21.10.2013, failing which the petition was ordered to be dismissed.

7. It is also brought to the notice of this Court by the learned counsel for the respondent that the conditional order has been complied with by the respondent / defendant by paying a sum of Rs.2000/- to the petitioner / defendant, which was also duly acknowledged by the petitioner / defendant. However, the same is disputed by the learned counsel for the petitioner. Aggrieved by the impugned order allowing I.A. No.833 of 2013, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India by the petitioner / defendant.

8. Heard Mr.S. Kanmani Annamalai, learned counsel for the petitioner and Mr.r.Krishnaswamy, learned counsel for the respondent.

Discussion :

9. The respondent / plaintiff has filed a suit against the petitioner / defendant seeking recovery of possession of the suit schedule property apart from claiming other reliefs in the suit. The respondent / plaintiff claims recovery of possession on the ground that he is the absolute owner of the suit schedule property, by virtue of a registered sale deed executed by the petitioner in his favour and it is his case that the petitioner / defendant is unlawfully continuing to occupy the suit schedule property for which he has also claimed damages in the suit. But it is the case of the petitioner / defendant that only as a security, a document was registered in favour of the respondent / plaintiff and the said document is not a sale deed and it was executed only as a security for the loan availed by the petitioner / defendant from the respondent / plaintiff who is a financier.

10. The petitioner has stated that only due to the transfer of the suit from the file of the Additional Sub Court, Chenglepet to the file of the District Munsif Court, Alandur, he was not aware of the date of the trial, as no notice was given to him about the transfer of the said suit and the date of the trial i.e. 3.09.2009 was also not intimated. In the counter affidavit filed before the Trial Court excepting for stating that

no proper reasons were given by the respondent / plaintiff for condoning the delay, no serious dispute has been raised by the petitioner / defendant for condoning the delay. However, the learned counsel for the petitioner / defendant is now disputing the veracity of the affidavit filed by the respondent / plaintiff without any pleading in the counter affidavit filed in I.A.No.833 of 2013.

11. It is also brought to the notice of this Court by the learned counsel for the petitioner that the costs of Rs.2,000/- as directed by the Trial court in I.A. No.833 of 2013 has already been paid to the petitioner / defendant by the respondent / plaintiff and the petitioner / defendant has also received the said costs. This Court has also perused and examined the impugned order. Considering the fact that admittedly a sale deed has been executed in favour of the respondent / plaintiff by the petitioner / defendant, the issue whether the sale deed is a genuine sale deed or is a fabricated one can be adjudicated only after trial. For this purpose, the respondent / plaintiff must be allowed to restore the suit which was dismissed for default on 03.09.2009. If condone delay application is not allowed, it will result in injustice to the respondent / plaintiff, as the genuineness of the sale deed executed in favour of the respondent / plaintiff can be tested only after trial.

12. Considering all these factors, this Court does not find any infirmity in the order passed by the Trial Court in I.A. No.833 of 2013 in O.S. No.444 of 2002.

13. In the result, the Civil Revision Petition stands dismissed. Since the suit is in the stage of trial, the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

03.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2/pam



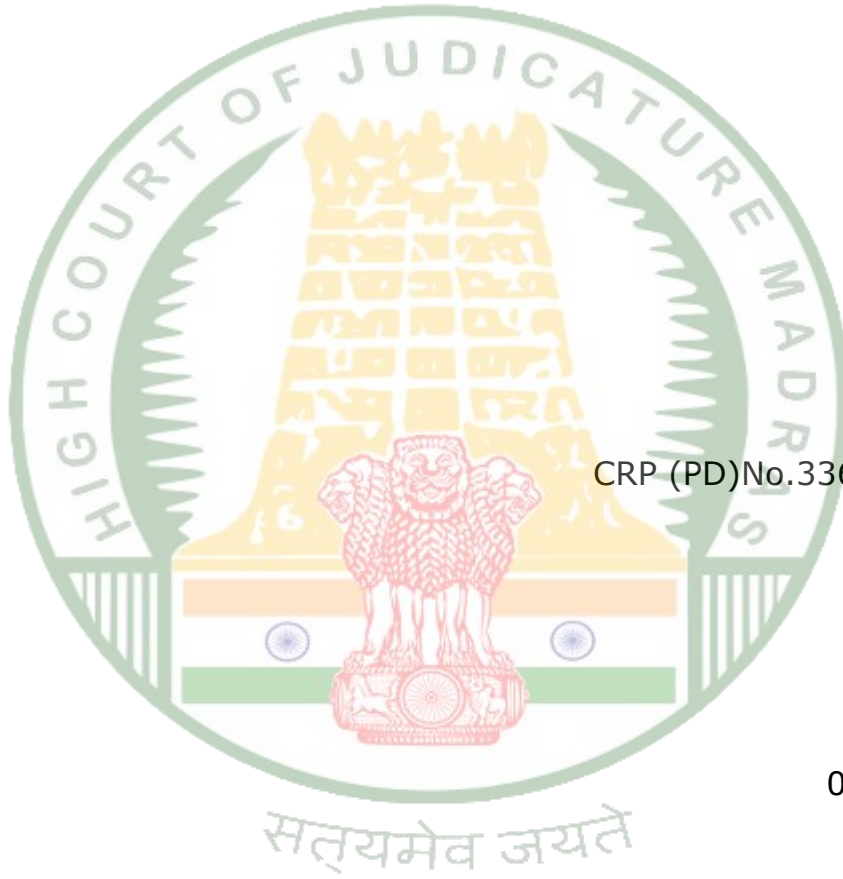
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ABDUL QUDDHOSE, J.

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To
The District Munsif, Alandur.



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