

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4699 of 2014
& M.P.No.1 of 2014

K.Santhakumari Petitioner

Vs

1. Chitra
2. Minor Lakshmipriya
Rep by her mother and
next friend the first
respondent Chitra Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 27.08.2013 in I.A.No.296 of 2013 in O.S.No.60 of 2009 on the file of the learned Principal District Judge at Chengalpattu.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.S.Ramesh

ORDER

Aggrieved over the order dated 27.08.2013 passed in I.A.No.296 of 2013 in O.S.No.60 of 2009 on the file of the learned Principal District Judge, Chengalpattu, the petitioner, who is the defendant in the above referred suit, filed the present Civil Revision Petition.

2. Before the trial Court, the respondents in this revision petition filed a suit in O.S.No.60 of 2009 and sought for the relief of specific performance in enforcing the agreement of sale dated 17.04.2006, with direction to the petitioner/ defendant to execute and register the sale deed in favour of the respondents/ plaintiffs, within the time fixed by the Court and other usual reliefs.

3. When the suit was posted for filing written statement by the petitioner/defendant, she has not filed the same before the trial Court. Hence, on 02.11.2010, because of the non-filing of the written statement, the learned Principal District Judge, Chengalpattu, passed an order of exparte against the petitioner. Subsequently, the petitioner filed an interlocutory application in I.A.No.4 of 2011 for the relief to set aside the exparte order. On 01.03.2012, when the application in I.A.No.4 of 2011 was posted for enquiry, the same was dismissed and the suit was posted for exparte evidence on 15.02.2012. Subsequently, on 15.06.2012, the suit was decreed in favour of the respondents. Only thereafter, after passing the order dated 15.06.2012, the petitioner herein filed an application in I.A.No.296 of 2013 to set a side the exparte decree passed in favour of the respondents.

4. The learned Principal District Judge, Chengalpattu, after affording opportunity to both sides, by his order dated 27.08.2013, dismissed the said application i.e., I.A.No.296 of 2013 filed by the petitioner, by observing that the petitioner has not stated correct particulars in respect of the suit proceedings and also for the reason that the delay requires to be condoned has not been properly explained. Aggrieved over the said findings, the petitioner is before this Court with the present Civil Revision Petition.

5. Today when this petition is taken up for hearing, both the learned counsels appearing for the petitioner and the respondents are present before this Court.

6. The learned counsel appearing for the petitioner would contend that only for the reason that the petitioner was suffering from illness, she was not in a position to come out from her house and therefore, eight days delay has occurred in filing the application to set aside the exparte decree. The said delay is neither wilful nor wanton. In this regard, he made a submission that for rendering real justice, it is necessary to allow this petition.

7. On the other hand, the learned counsel appearing for the respondents would contend that immediately after passing the exparte decree, the respondents deposited a sum of Rs.11,32,000/- with the Court towards the balance sale consideration and filed an execution petition in E.P.No.66 of 2012 to execute the decree. But the petitioner herein after receiving the notice issued in the E.P. Proceedings, did not appear before the trial Court in person or through counsel. Only in the said circumstances, the sale deed has been executed by the Court on 03.11.2013 and thereby it cannot be said that the petitioner approached this Court with bonafide reasons. According to him, the findings given by the learned Principal District Judge, Chengalpattu, in the impugned order are within the principle of law.

8. The submissions made by the learned counsel appearing on either side are considered.

9. Before entering into the merits and demerits of the case filed by the petitioner, it is relevant and useful to see the order dated 14.11.2017, passed by this Court in **C.R.P.(NPD)No.1619 of 2019** in the case of **M.Chandra Vs. N.Boopathy**, in which, in the same situation, an Amicus Curie has been appointed by this Court and

thereafter, following the principles laid down by our Hon'ble Apex Court in the judgement reported in **2001 (6) SCC 176** in the case of **M.K.Prasad Vs. P.Arumugam** and in the judgement reported in **1998 (7) SCC 123** in the case of **N.Balakrishnan Vs. M.Krishnamurthy**, this Court has held as follows :-

".....while deciding the application for setting aside the ex parte decree the court should have kept in mind the judgment impugned, the extent of property involved and the stake of the parties" and ultimately, the delay was condoned on payment of cost. Therefore, reading of Section 5 of the Limitation Act along with Order XX Rule 4(2) of C.P.C. and the judgment of the Hon'ble Supreme Court cited supra, a non speaking judgment would be one of the sufficient causes for condoning the delay in filing an application to set aside the ex parte decree....." सत्यमेव जयते

10. Here applying the principles laid down by the Hon'ble Apex Court as well as this Court referred above, in this case also the learned Principal District Judge, Chengalpattu, at the time of passing order, has not considered the facts properly. So, the same has also been near to the proximity of Section 4 (2) of C.P.C. More than that, the

above said judgement has been rendered in respect of the condonation of delay of 292 days. But the Civil Revision Petition before this Bench is in respect of condonation of delay of only 8 days.

11. Now the crucial aspect to be decided in this case is, since the sale deed has already been executed by the Court below after depositing balance sale consideration, if the present revision petition is allowed, what will be the position of the sale deed already executed by the Court below. In the said situation, it is necessary to pass an order that if the respondents succeed in the suit, the sale deed dated 03.11.2013 is coming into effect. If otherwise the petitioner succeeds in the suit, the sale deed dated 03.11.2013, stands cancelled. However, the expenses for the execution of cancellation of sale deed should be recovered from the petitioner/defendant.

12. In view of the aforesaid reasons, this Court has no hesitation to set aside the impugned order, however with costs. In the facts and circumstances of the case, this Court is inclined to pass the following orders:-

(i) The impugned order dated 27.08.2013 in I.A.No.296 of 2013 in O.S.No.60 of 2009 passed by the learned Principal District

Judge, Chengalpattu, be set aside, on condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees ten thousand only) as costs, to the respondents, within a period of two weeks from the date of the receipt of a copy of this Order, in default, the Civil Revision Petition stands dismissed.

(ii) In the event of compliance of the conditional order passed herein above, the trial Court shall consider the application in I.A.No.269 of 2013 on merits and in accordance with law, without being influenced by any of the observations made by this Court herein above.

13. With the above directions, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

30.09.2019

Internet : Yes / No

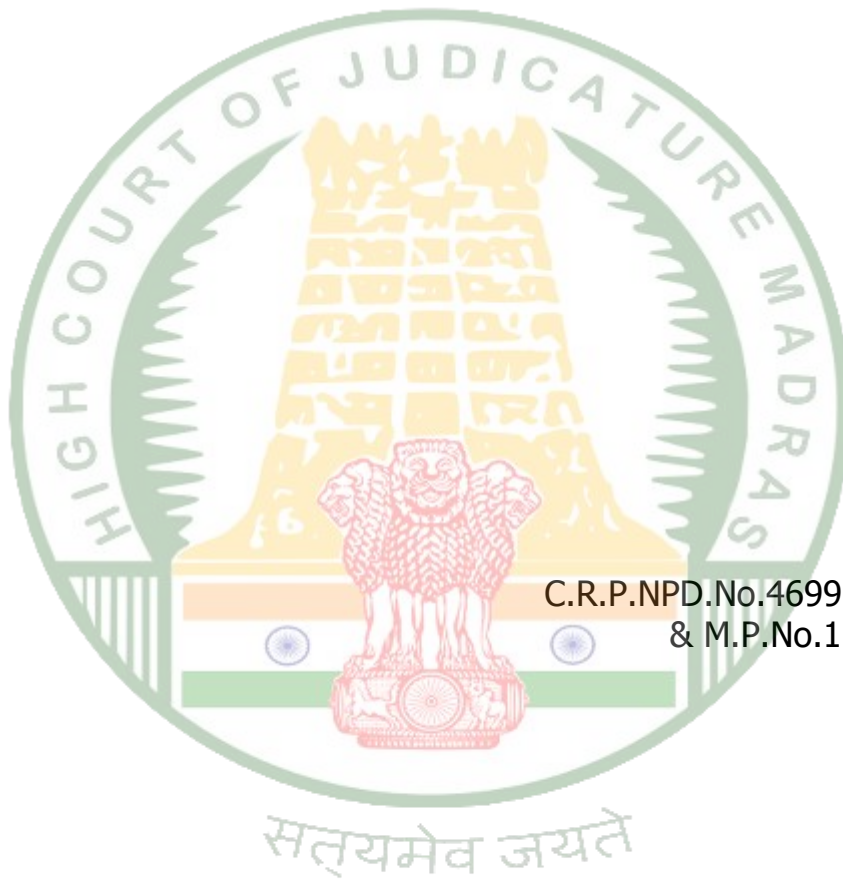
Index : Yes / No

Speaking / Non Speaking order
rts

To
The Principal District Court,
Chengalpattu.

R.PONGIAPPAN, J.

rts



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