

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.07.2018

Delivered on: 14.06.2019

CORAM

THE HONOURABLE THIRU JUSTICE P.VELMURUGAN

C.R.P.(NPD) No.4773 of 2017 &
CMP No.22466 of 2017

Vidyalakshmi

.... Petitioner

- Vs -

1. V.Kumari

2. V.Senthil

3. R.Umameswari

4. The District Collector
Kanchipuram District,
Collector Office,
Kanchipuram.

5. The Tahsildar,
Cheyyur Taluk,
Cheyyur, Kanchipuram District.

.... Respondents

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Civil Revision Petition filed under Article 227 of the Constitution of India
praying to set aside the fair and decretal order dated 23.10.2017 made in
I.A.No.1633 of 2017 in O.S.No.227 of 2015 on the file of the learned District
Munsif, Madhurantakam, Kanchipuram District.

For petitioner : Mr.R.Anbalagan
For respondents : Mr.S.Muthiah for R1 to R3
Mr.M.Venkadeshkumar,
Govt. Advocate for R4 & R5

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 23.10.2017 made in I.A.No.1633 of 2017 in O.S.No.227 of 2015 on the file of the learned District Munsif, Madhurantakam, Kanchipuram District.

2. The revision petitioner is the petitioner in I.A.No.1633 of 2017 and third defendant in the suit in O.S.No.227 of 2015. The respondents 1 to 3 are the plaintiffs in the above suit and the respondents 4 and 5 are the defendants 1 and 2 in the suit. It can be seen from the records that the respondents 1 to 3 herein had filed a suit against the revision petitioner herein/third defendant and other respondents in O.S.No.227 of 2015 for declaration, to declare the respondents 1 to 3 herein/plaintiffs therein are the legal heirs of one V.Venkatesan, who died on 18.01.2015 and mandatory injunction to direct the fifth respondent herein/second defendant therein to issue legal heir certificate to the plaintiffs therein that they are the legal heirs of the deceased V.Venkatesan. The said suit was decreed on 28.04.2017. The revision petitioner/third defendant in the suit filed a petition to set aside the ex-parte decree passed against her. Since there was a delay of 16 days

in filing the petition, he filed an application under Section 5 of the Limitation Act in I.A.No.1633 of 2017 to condone the delay. After enquiry, the learned District Munsif dismissed the petition in I.A.No.1633 of 2017 on 23.10.2017. Challenging the said order, the petitioner/3rd defendant is before this Court by way of this Civil Revision Petition.

3. According to the petitioner, the respondents 1 to 3/plaintiffs in O.S.No.227 of 2015 filed an application under Section 151 of CPC in I.A.No.1858 of 2018 to receive the document, which has been marked as Ex.A15. The revision petitioner filed an application under Order 13 Rule 3 r/w Section 151 of CPC in I.A.No.173 of 2017 to expunge and demark the document Ex.A15 from the file. The said application was dismissed on 31.01.2017. Challenging the said order, the revision petitioner preferred the Civil Revision Petition before this Court in CRP.(PD) No.1814 of 2017. During pendency of the said revision, the trial Court pressed the revision petitioner to proceed the case and cross-examined the witnesses of the plaintiffs. Since the order passed by the trial Court in I.A.No.173 of 2017 was under challenge before this Court, he could not cross-examined the witness. Hence, the petitioner sought time till the outcome of the Civil Revision Petition. The learned trial Judge refused to grant time as prayed for by the petitioner and directed her to produce the order of this Court in CRP.(PD) No.1814 of 2017. Since she could not produce the order copy, she was set ex-parte in the said

application. The non cross-examination was neither willful nor wanton. The learned District Munsif failed to give her an opportunity to contest the case and passed the order of ex-parte. Subsequently, the said Civil Revision Petition was dismissed by this Court on 13.06.2017. Though the petitioner was ready to proceed with the case, she could not produce the order copy of this Court in Civil Revision Petition within the prescribed time. There was a delay of 16 days in filing the petition to set aside the ex-parte decree and hence, she could not file the petition to set aside the ex-parte decree. Thereafter, the petitioner filed the application in I.A.No.1633 of 2017 seeking to condone the delay of 16 days in filing the application to set aside the ex-parte decree passed against the petitioner on 27.04.2017 and the same was dismissed by the learned District Munsif, Madurantakam on 23.10.2017. The petitioner/3rd defendant filed her written statement, issues were framed and the trial commenced in the suit. If the opportunity would be given to the petitioner/3rd defendant, no prejudice would be caused to the respondents 1 to 3 herein/plaintiffs therein. The learned District Munsif adopted the technical ground and failed to give an opportunity, which warrants interference.

4. The learned counsel for the respondents 1 to 3 would submit that though the petitioner filed the application in I.A.No.173 of 2017 to expunge and demark the document Ex.A15 from the file. The said application was

dismissed on 31.01.2017. Challenging the said order, the revision petitioner preferred the Civil Revision Petition before this Court in CRP.(PD) No.1814 of 2017. During pendency of the said revision, the trial Court pressed the revision petitioner to proceed the case and cross-examined the witnesses of the plaintiffs. Since the order passed the trial Court in I.A.No.173 of 2017 was under challenge before this Court, he could not cross-examine the witness. Hence, the petitioner sought time till the outcome of the Civil Revision Petition. The learned trial Judge refused to grant time as prayed for by the petitioner and directed her to produce the order copy of this Court in CRP.(PD) No.1814 of 2017. Since she could not produce the order, she was set ex-parte in the said application. The non cross-examination was neither willful nor wanton. The learned District Munsif failed to give an opportunity to him to contest the case and passed the order of ex-parte. Subsequently, the said Civil Revision Petition was dismissed by this Court on 13.06.2017. Though the petitioner was ready to proceed with the case, he could not produce the order copy of this Court in Civil Revision Petition within the prescribed time. There was a delay of 16 days in filing the petition to set aside the ex-parte decree. As per the decision of the Hon'ble Supreme Court, each day of delay should be explained. In this case, the petitioner has not properly explained the delay of 16 days to file the petition. The trial Court rightly considered the said fact and dismissed the petition, which does not warrant interference.

5. Heard the learned counsel appearing for the revision petitioner, the learned counsel appearing for the respondents 1 to 3 and the learned Government Advocate (Civil Side) appearing for the respondents 4 and 5 and also perused the materials on record.

6. It is not in dispute that the respondents 1 to 3 filed a suit in O.S.No.227 of 2015 before the District Munsif Court, Mudurantakam against the revision petitioner herein/third defendant in the suit. After filing the written statement, trial Court framed the issues and the trial was commenced. At that stage, the revision petitioner filed an application in I.A.No.173 of 2017 to remove Ex.A15 from the file stating that the Court illegally marked the document. The said application was dismissed by the trial Court. Challenging the said order, the revision petitioner preferred the Civil Revision Petition before this Court in CRP(PD) No.1814 of 2017. During pendency of the said revision, the trial Court insisted the revision petitioner to proceed the case and cross-examine the witnesses of the plaintiffs. Since the order passed by the trial Court in I.A.No.173 of 2017 was under challenge before this Court, she could not cross-examine the witness. Hence, the petitioner sought time till the outcome of the Civil Revision Petition. The learned trial Judge refused to grant time as prayed for by the petitioner and directed him to produce the copy of the order of this Court in CRP.(PD) No.1814 of 2017. Since he could

not produce the order, he was set ex-parte in the said application. Thereafter, the petitioner filed the application in I.A.No.1633 of 2017 seeking to condone the delay of 16 days in filing the application to set aside the ex-parte decree passed against the petitioner on 27.04.2017 and the same was dismissed by the learned District Munsif, Madurantakam on 23.10.2017.

7. It is not in dispute that during pendency of the suit, the petitioner filed an application in I.A.No.173 of 2017 for rejection of the documents Ex.A15 and the said petition was dismissed. There against, the petitioner filed Civil Revision Petition before this Court and the same was also dismissed. In the meanwhile, the ex-parte decree was passed against the revision petitioner. He filed a petition to set aside the same with a delay of 16 days. Therefore, the trial Court ought to have set aside the ex-parte decree by giving opportunity to the revision petitioner to defend the case. Since the trial was commenced and the respondents/plaintiffs side evidence was examined, the Court below ought to have disposed the case on merits. Once the ex-parte order passed, the defendant can file a petition to set aside the ex-parte decree within 30 days. No doubt the petitioner in this case has not filed the petition within the prescribed time. The Hon'ble Supreme Court and this Court have given the guidelines that while considering a petition to condone the delay in filing the petition to set aside the ex-parte decree, that too in the initial stage, the Court has to follow liberal approach and also give an

opportunity to the parties to resolve their grievances on merit. In this case, the Court has stated that the dismissal of CRP PD.No.1814 of 2017 was not informed to the Court.

8. In the circumstances, in order to give the opportunity to the revision petitioner to defend the suit, the order dated 23.10.2017 made in I.A.No.1633 of 2017 passed by the learned District Munsif, Madurantakam, is hereby set aside and the delay of 16 days in filing the application to set aside the ex-parte decree passed against the petitioner on 28.04.2017 is condoned. The learned District Munsif, Madurantakam is directed to take the petition filed by the petitioner to set aside the ex-parte decree on file and after giving opportunity to both the revision petitioner and the respondents and dispose of the same on merit and in accordance with law.

9. With the above directions, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

14.06.2019

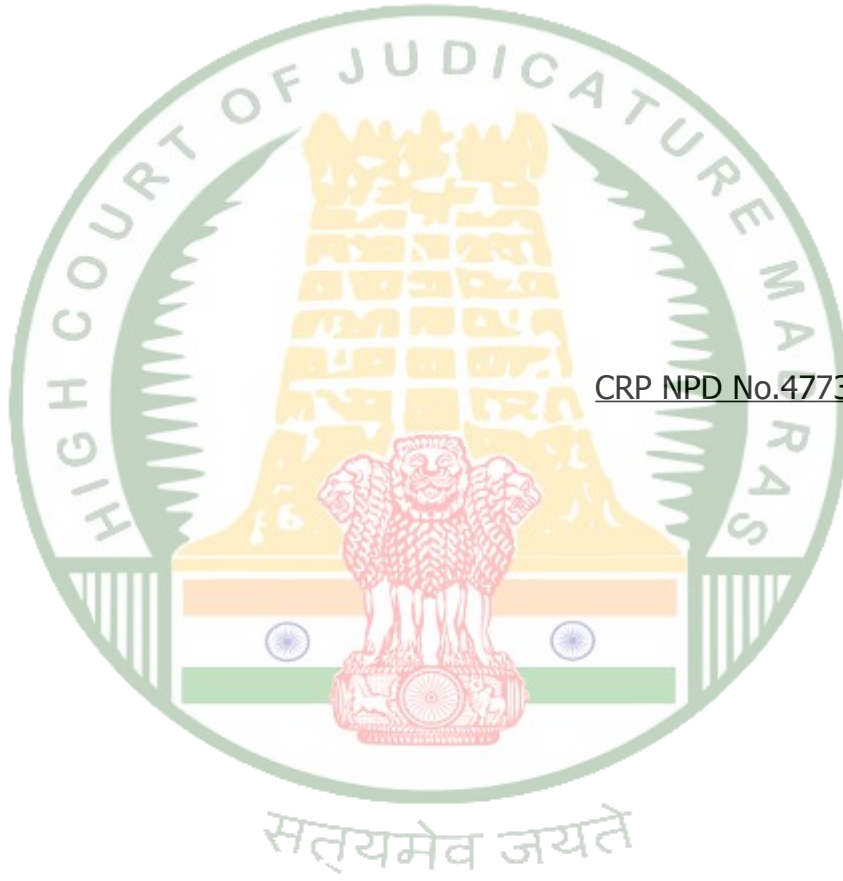
Index: Yes/no Speaking/Non-Speaking Order

KMI

To
The District Munsif,
Madurantakam, Kancheepuram.

P.VELMURUGAN, J.

KMI



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