

C.R.P.(PD).Nos.3416 and 3417 of 2018
and C.M.P.No.19218 of 2018

P.T. ASHA, J,

This matter is posted today under the caption "for being mentioned" before this Court.

2.C.R.P.(PD).No.3416 of 2018 is filed challenging the order in I.A.No.8194 of 2016 which is the petition filed under Order VII Rule 11 of the Code of Civil Procedure. This application was dismissed only on the ground that it was premature as the revision petitioner is set *ex parte* and the order has been pending against him.

3.Considering the fact that C.R.P.(PD).No.3416 of 2018 filed challenging the order in I.A.No.373 of 2017 has been set aside, the orders in I.A.No.8194 of 2016 is remitted back to the trial Court for fresh disposal.

4.Therefore, the lines in Paragraph 7, "I do not have any infirmity in the order passed by the learned VII Assistant City Civil Judge, Chennai, in the above matter. Consequently, C.R.P.No.3416 of 2018 stands dismissed." shall be substituted with the following lines:

"Therefore, I.A.No.8194 of 2016 is remitted back to
the trial Court for fresh disposal."

P.T. ASHA, J,

mps
5.As a consequence, the first sentence of Paragraph 10 shall be substituted with the following sentence:

"The above exercise of disposing of I.A.No.8194 of 2016 shall be completed on or before 29.04.2019."

6.Last paragraph will read as follows:

"C.R.P.(PD).No.3416 of 2018 is disposed of remitting back I.A.No.8194 of 2016 to the trial Court for fresh disposal and C.R.P.(PD).3417 of 2018 is allowed."

The Registry is directed to rectify the above mistakes and reissue the order.

सत्यमेव जयते

15.04.2019

mps

Note to office:

Issue order copy on 15.04.2019.

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C.R.P.(PD).Nos.3416&3417/18
and C.M.P.No.19218 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).Nos.3416 & 3417 of 2018
&
C.M.P.No.19218 of 2018

N.Jeyalakshmi

...Petitioner

Vs

1.M.Mekala

2.Pattammal

3.Chandrasekar

4.The Managing Director
Purasawakkam Permanent fund Limited
No.173, Vellala Street,
Purasawakkam,
Chennai – 600 084.

... Respondents

Prayer in C.R.P.No.3416 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 10.07.2018 made in I.A.No.8194 of 2016 in O.S.No.3960 of 2011 on the file of the VII Assistant City Civil Court, Chennai.

Prayer in C.R.P.No.3417 of 2018: Civil Revision Petition is filed

under Article 227 of the Constitution of India against the fair and final order dated 30.07.2018 made in I.A.No.373 of 2017 in O.S.No.3960 of 2011 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Vivekanand
For Respondent 1 : Mr.S.Sathish Kumar
For Respondent 2 & 3 : Mr.S.Sathish Rajan
For Respondent 4 : Mr.M.A.Lakshmipathi

ORDER

A perusal of order passed by the learned VII Assistant City Civil Judge, Chennai in I.A.No.8194 of 2016 in O.S.No.3960 of 2011 dated 10.07.2018 and the order of the very same Judge in I.A.No.373 of 2017 in O.S.No.3960 of 2011 passed on 30.07.2018, clearly demonstrates the absolute non-application of mind on the part of the learned Judge. The learned Judge has ipso facto extracted the order dated 10.07.2018 and incorporated the very same Judgement into the order in I.A.No.373 of 2017. Therefore the order in I.A.No.373 of 2017 does not constitute a well-considered order.

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2.Coming to the facts of the case the 1st respondent herein had filed a suit O.S.No.3960 of 2011 for a specific performance of an agreement of sale dated 19.01.2006 said to have been executed by the 1st and 2nd defendant. The revision petitioner is the 4th defendant

in the said suit.

3. There is a chequered history to the above proceedings where various suits have been filed by the parties to the proceedings. The 4th defendant is the auction purchaser who has purchased the property in the suit auction conducted by the 3rd defendant, the mortgagee, exercising their rights under Section 69 of the Transfer of Property Act. It is seen that there is one suit O.S.No.5803 of 2007 filed by the plaintiff herein challenging the auction notice, which was dismissed on merits. Thereafter the 1st defendant had filed O.S.No.5922 of 2007 for redeeming the mortgage and also challenging the auction notice. The suit was dismissed for default on 27.02.2017.

4. Meanwhile the 4th defendant/revision petitioner had filed a suit C.S.No.1022 of 2009 on the file of this Honourable Court for a declaration and for a delivery of possession. This suit was subsequently transferred to the XIX Additional City Civil Court, Chennai and re-numbered as O.S.No.11985 of 2010. Thereafter, the plaintiff has come forward with the suit O.S.No.3960 of 2011, which is the subject matter of this revision, putting forward the agreement of sale dated 19.01.2006. According to the revision petitioner/4th defendant, she did not receive any summons in the above suit and it is

only during evidence in O.S.No.11985 of 2010 that she had come to know about the suit O.S.No.3960 of 2011. Thereafter she had filed the petition for condoning the delay in setting aside the ex parte order passed against her (I.A.No.8193 of 2016), setting aside the ex parte order (I.A.No.373 of 2017) and also for rejecting the plaint (I.A.No.8194 of 2016). A common affidavit has been filed for all the petitions.

5.The VII Assistant City Civil Judge who had deemed it fit to condone the delay in filing the application to set aside the ex parte order dismissed the application for setting aside the ex parte order I.A.No.8193 of 2016 though a common affidavit was filed giving the very same reasons for the condonation of delay as well as for setting aside ex parte order.

6.The Application filed by the revision petitioner/4th defendant under Order IX Rule 7 which is I.A.No.373 of 2017 was dismissed by the order dated 30.07.2018, though it was filed with the very same averments as in the order in I.A.No.8193 of 2016. These two orders are the subject matter of the challenge before this Court by the 4th defendant.

7. Heard both the parties. As regards C.R.P.No.3416 of 2018 the same is filed challenging the order in I.A.No.8194 of 2016 which was the application filed to reject the plaint. The learned VII Assistant City Civil Judge has rightly held that the application is premature since the revision petitioner has to first have his ex parte order set aside and without completing this exercise the application to reject the plaint cannot be filed. I do not have any infirmity in the order passed by the learned VII Assistant City Civil Judge, Chennai in the above matter. Consequently, C.R.P.No.3416 of 2018 stands dismissed.

8. As regards C.R.P.No.3417 of 2018, a mere perusal of the affidavit filed in support of all the three petitions would clearly indicate that the very same reasons have been produced for the condonation of the delay of 526 days in filing the application to set aside the ex parte order as well as for setting aside the ex parte order and to reject the plaint. Having found sufficient cause to condone the delay of 526 days in filing the application for setting aside the ex parte order it is not known as to how the learned Judge has dismissed the application for setting aside the ex parte order, more particularly when the suit is still pending and what is sought to be set aside is only ex parte order and not ex parte decree.

9.The learned Judge has not focused on the facts or the records placed before her. Infact, though the documents have been marked the learned Judge has not even listed these documents but on the contrary has shown that no documents have been exhibited in the proceedings. The order in I.A.No.373 of 2017 suffers from non-application of mind and is liable to set aside and is accordingly set aside and C.R.P.No.3417 of 2018 is allowed.

10.The above exercise shall be completed on or before 29.04.2019. The counsel for the petitioner had expressed his reservations in going back to VII Assistant City Civil Court, Chennai, since the very manner in which the entire proceedings were conducted causes an apprehension in the mind of the 4th defendant. The counsel for the plaintiff is also not averse to the matter being transferred to the file of the XIX Additional City Civil Judge, Chennai, wherein the suit O.S.No.11985 of 2010 filed by the revision petitioner/4th defendant is pending. Accordingly, the suit O.S.No.3960 of 2011 is withdrawn from the file of the VII Assistant City Civil Court, Chennai and transferred to the file of the XIX Additional City Civil Court, Chennai.

The Civil Revision Petitions are allowed on the above lines. There shall be no order as to costs. Consequently, connected Civil

Miscellaneous Petition is also closed.

26.03.2019

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The VII Assistant City Civil Judge, Chennai

2.The XIX Additional City Civil Judge, Chennai

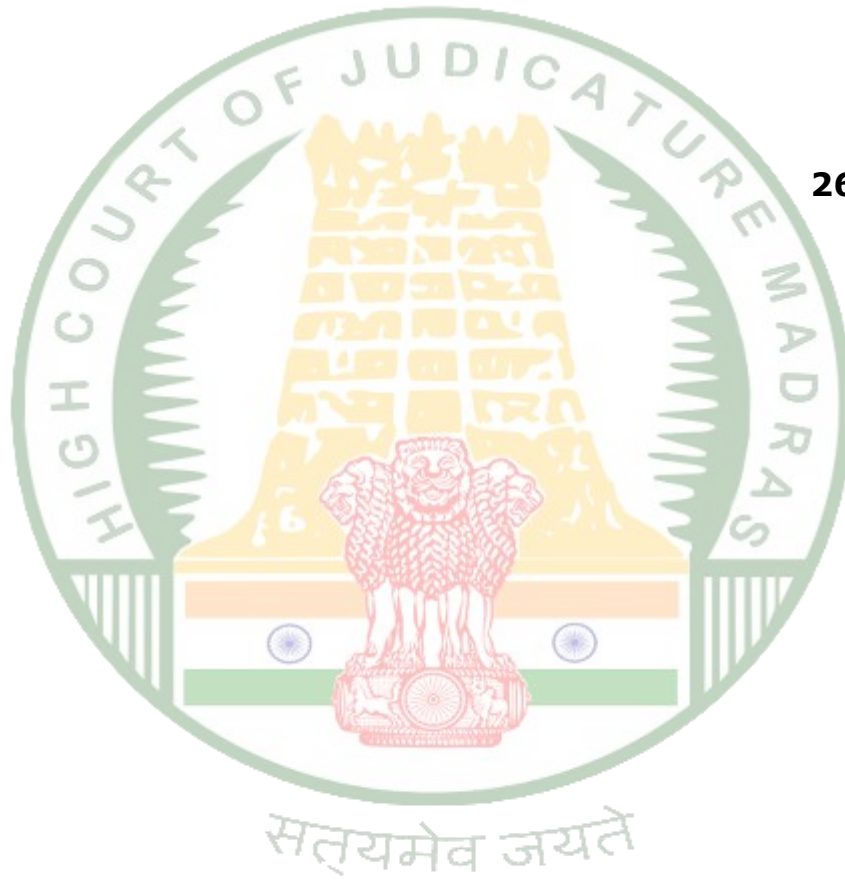


P.T.ASHA, J.,

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