



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD)No.648 of 2012
and M.P. (MD) .No.1 of 2012

1.Ramakrishnan Nair

2.Bhavani Amma .. Petitioners/Petitioners/Defendants

-Vs-

Muthaian .. Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order passed in I.A.No.219 of 2010 in O.S.No.31 of 2006 on the file of the Sub Court, Padmanabhapuram, dated 02.02.2012.

For Petitioners : Mr.M.V.Venkataseshan

For Respondent : Mr.C.K.M.Appaji

ORDER

This civil revision petition has been filed by the petitioners against the fair and final order I.A.No.219 of 2010 in O.S.No.31 of 2006, passed by the court below dismissing the application filed to condone the delay of 1053 days in filing a petition to set aside the ex-parte decree, dated 22.03.2007.

2.The respondent has filed the suit against the petitioners for the relief of specific performance. This suit was decreed ex-parte by judgment and decree, dated 22.03.2007.

3.It is the case of the petitioners that they came to know about the ex-parte decree passed against them only in the year 2009, i.e., when they received the notice in the execution proceedings. Immediately thereafter, they have filed the petition to set aside the ex-parte decree along with a condone delay petition, to condone the delay of 1053 days in setting aside the ex-parte decree.

4.The Court below has dismissed the petition on the ground that the petitioners were aware about the suit that was filed by the respondent even in the year 2006 and therefore it was not right on the part of the petitioners to state that they became aware about



the suit only in the year 2009. The court below found that the petitioners have not shown sufficient cause for condoning the delay.

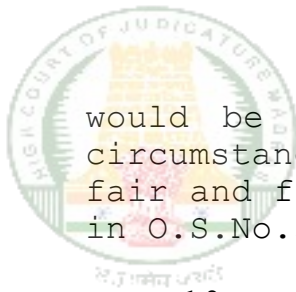
5.The learned counsel for the petitioner submitted that the ex-parte judgment that was passed by the court below is not in accordance with Order XX of Civil Procedure Code. The learned counsel further submitted that the judgment was passed without any appreciation of evidence and even without the court below coming to a satisfaction that the petitioners were ready and willing to perform their part of contract. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Division Bench of this Court in **M/s. Meenakshisundaram Textiles Vs. M/s.Valliammal Textiles Ltd.**, reported in 2011 (3) CTC 168 and the judgment of the Honourable Supreme Court in **Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Company Ltd.**, and another reported in 2013 (4) SCC 396.

6.Per contra the learned counsel appearing on behalf of the respondent submitted that the petitioners did not approach the court below with clean hands and they made a false statement before the court below to the effect that they became aware about the filing of the suit only during the year 2009 and whereas Exs.R2 and R4 that was relied upon by the court below have clearly shown that the petitioners were aware about the pendency of the suit in the year 2006 itself. The learned counsel further submitted that the court below has given cogent reasons while dismissing the petition and that there are absolutely no grounds to interfere with the same.

7.This Court carefully considered the submissions made on either side and the materials available on record.

8.This Court finds force in the submissions made by the learned counsel for the petitioners. As rightly contended by the learned counsel for the petitioners, the Division Bench of this Court in the judgment, cited supra, has categorically held that even an ex-parte judgment will have to reflect application of mind by referring to the pleadings and the evidence. The Division Bench has also proceeded to hold that there are two remedies that are available to the defendant as against the ex-parte decree. One is to file an appeal and the other is to file a petition to set aside the ex-parte decree. In both cases, the nature of ex-parte judgment that was passed by the trial Court will have to be assessed before coming to a final conclusion. This position has been reiterated by the Honourable Supreme Court in the judgment that has been referred by the learned counsel for the petitioner.

9.The issue involved in the suit relates to the substantial right of the parties. The respondent is the agreement holder and he has sought for the relief of specific performance based on the agreement. Since it involves substantial right of the parties, it



would be better if the suit is decided on merits. Under such circumstances, this court has no hesitation to interfere with the fair and final order passed by the court below in I.A.No.219 of 2010 in O.S.No.31 of 2006.

10. In the result, this civil revision petition is allowed and the fair and final order passed in I.A.No.219 of 2010 in O.S.No.31 of 2006 dated 02.02.2012, on the file of the Sub Court, Padmnabapuram, is hereby set aside. The I.A.No.219 of 2010 in O.S.No.31 of 2006 on the file of the Sub Court, Padmnabapuram, is allowed subject to the condition that the petitioners pay a sum of Rs.10,000/- towards cost to the respondent within a period of three weeks from the date of receipt of a copy of this order. On such payment of cost, a memo shall be filed before the court below and the court below shall allow the petition to set aside the ex-parte decree. Thereafter, the suit shall be decided on merits within a period of three months. If the cost is not paid by the petitioners within the time stipulated by this Court, the court below shall not thereafter entertain the petition for setting aside the ex-parte decree and the ex-parte decree will become final. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

TM

To

1.The Subordinate Judge, Padmanabhapuram.

2.The Record Keeper,

E.R/V.R. Section,

Madurai Bench of Madras High Court,

Madurai.(2 copies)

+1 CC to M/s.C.K.M. APPAJI, Advocate (SR-88005[F] dated 20/09/2019)

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-88329[F] dated 20/09/2019)

C.R.P. (PD) (MD)No.648 of 2012

19.09.2019

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