

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2019
PRONOUNCED ON : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.1988 of 2012
and
M.P.No.2 of 2012

1.Karpagam
2.Saradha ...Petitioners/Defendants 3 & 4
.. Vs ..
Venkatachalam ...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of CPC, against the order passed in I.A.No.22 of 2012 in O.S.No.28 of 2006, on the file of the learned Subordinate Judge, Harur, dated 27.03.2012.

For Petitioners : Mr.R.Ezhilarasan
For Respondent : Mr.V.Nicholas

JUDGMENT

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Harur, in I.A.No.22 of 2012 in O.S.No.28 of 2006, dated 27.03.2012.

2 The defendants 3 and 4 in O.S.No.28 of 2006, are the revision petitioners.

3 These revision petitioners/defendants 3 & 4, have filed an application under Section 5 of the Limitation Act to condone the delay of 942 days in setting aside the ex-parte order, under Order IX Rule XIII and the same was dismissed and hence, the revision.

4 Brief facts of the case are as follows:

The first petitioner is the third defendant in the suit O.S.No.28 of 2006. The fourth defendant is her sister. The first petitioner herein / third defendant had mistakenly shown her name as Kalpana in the suit. The respondent herein/plaintiff filed the suit against her father, mother and her brother for specific performance of contract. The minor fourth defendant in the suit viz., Saradha has attained majority. The respondent/plaintiff had not received any summons from the Court. The ex-parte decree was passed on 03.04.2009. Thereafter, the respondent/plaintiff filed a petition in REP.No.7/10 to execute the Sale Deed. The respondent/plaintiff had filed an execution petition in REP.No.24/11 for delivery of possession on the basis of the Sale Deed obtained through ex-parte decree. After having the notice of execution proceedings, I.A.No.22 of 2012, was filed to condone the delay of 942 days in filing Order IX Rule XIII petition.

5 Heard both sides and perused the materials placed on record.

6 It is seen from the counter statement filed before the Trial Court by the plaintiff in I.A.No.22 of 2012 that the first petitioner name is Kalpana and not Karpagam. In the Trial Court, one advocate Mr.P.Subramaniam filed vakalath on behalf of the first petitioner/third defendant by name Kalpana and for the defendants 1 & 2 and the name of "Karapagam" is only invented for the purpose of the case. The first defendant also filed the written statement on 30.03.2007 and the same was adopted by the other defendants. The name of the first petitioner as "Karpagam" is not correct. The suit summons were served to the defendants 3 & 4 and one Mr.P.Subramainam, Advocate appeared on behalf of the third defendant. The defendants though appeared through advocate, have not filed the written statement. On 08.01.2007 all the defendants were called absent and set ex-parte and it was posted for ex-parte evidence on 24.01.2007. At this stage the petitioners/defendants filed an application to set aside the ex-parte order in I.A.No.169 of 2008. On 30.03.2007 in that petition, the

order was passed on 13.10.2008 that the petition shall be allowed on payment of cost of Rs.500/- on or before 24.10.2008. But the petitioner has not paid the costs of Rs.500/- and the petition was dismissed on 24.10.2008. Further, there is no application filed or no revision was filed. The Trial Court, on consideration, has dismissed the petition and hence the Revision.

7 The short point that has to be arises for consideration in this case is that, whether the petitioners have shown sufficient cause in condoning the delay of 942 days? It is seen from the records that the respondent herein filed a suit for specific performance of contract agreement the date being 08.07.2003 against the defendants 1 and 2 viz., parents of the petitioner 1 and 2 herein and his brother, the fourth defendant. It is also seen that one advocate has been engaged by them and he has filed vakalth for both these revision petitioners, wherein, the name is shown as Kalpana. The suit summons were duly served and Mr.P.Subramaniam, learned counsel has appeared on behalf of the third defendant viz., the petitioner herein.

8 It is also seen from the records that as the written

statement of these petitioners were not filed, they were set ex-parte and they were filed a petition to set aside ex-parte order passed in I.A.No.169 of 2008. However, taking into consideration, the subject matter being the specific performance of the suit, Sale Agreement, the IA to set aside the ex-parte order was allowed on 13.10.2009 on payment of costs of Rs.500/- within stipulated time. For the reasons best known, the cost was not paid and hence, the petition was dismissed and no further revision has also been filed. Thereafter, it was posted for ex-parte evidence and evidence has been taken and ex-parte decree was passed on 03.04.2009

9 It is seen from the records of the Execution Court that REP.No.7 of 2010, was filed by the plaintiff/deGREE holder to execute the Sale Deed and after service of summons, the same was allowed. Thereafter, after getting the Sale Deed through the Court, the plaintiff/deGREE holder also filed REP No.24 of 2011 for delivery of possession of the property and in the said application, notice was duly served by the parties on 19.01.2012 and they also filed vakalath through the respective counsels and were afforded necessary opportunities for filing the counter. As the counter was not filed, they were set ex-parte in the execution proceedings on

20.04.2012 and thereafter, delivery of possession was ordered on 24.04.2012. Thereafter, the present I.A was filed to set aside the ex-parte with delay of 942 days.

10 On a perusal of the affidavit filed in support of the petition, to condone the said delay of 942 days, under Section 5 of the Limitation Act, this Court does not find that the petitioners have made out sufficient cause and not assigned any acceptable reasoning to say that suit summons were not properly served, name of the petitioners were slightly differ as noted supra that the name as found in decree. The petitioners have entered appearance through an advocate and he has filed vakalath and he has also filed a petition to set aside the ex-parte order and also filed necessary application and vakalath in the execution proceedings.

11 This Court find that both the pleas taken by the petitioners are found to be factually incorrect and in the absence any positive reason much less any reason to condone the delay, this Court is of the view that the petitioners have failed to prove the sufficient cause to condone the delay.

12 In view of the above, the Civil Revision Petition stands dismissed and the order passed by the learned Subordinate Judge, Harur, dated 27.03.2012, in I.A.No.22 of 2012 in O.S.No.28 of 2006, is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

02.01.2020

Index : Yes / No
Internet : Yes
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To
The Subordinate Judge,
Harur.

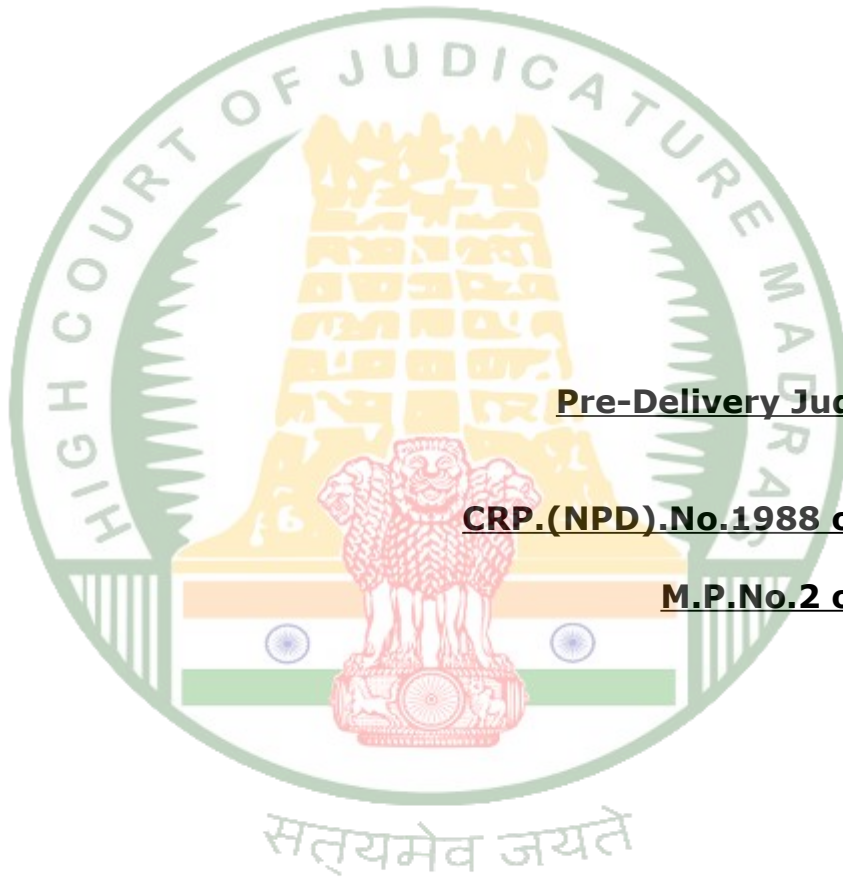


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RMT.TEEKAA RAMAN. J.

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Pre-Delivery Judgment
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