

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2020

PRONOUNCED ON : 19.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4423 of 2012

and

M.P.No.1 of 2012

Premchand K.Jain ...Petitioner/Plaintiff

Vs.

S.Govindarajan ...Respondent/
Defendant

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order dated 08.10.2012, made in I.A.No.231 of 2012 in O.S.No.1337 of 2002, on the file of the learned III Additional Sub Court, Coimbatore.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.E.Ravichandran
for Mr.C.Usha

ORDER

This Civil Revision Petition has been filed against the order passed by the III Additional Subordinate Court, Coimbatore, in I.A.No.231 of 2012 in O.S.No.1337 of 2002, dated 08.10.2012.

2 The plaintiff in the suit O.S.No.1337 of 2002 is the revision petitioners herein.

3 Brief facts of the case:

(i) The revision petitioner/plaintiff had filed a suit in O.S.No.1337 of 2002, before the learned Subordinate Judge, Coimbatore, for recovery of advance amount paid under the suit sale agreement. As per the plaint, on 18.11.1999, both the plaintiff and the defendant have entered into a sale agreement under which the defendant has agreed to sell the said suit property to the plaintiff for a sum of Rs.8,00,000/- and on the date of sale agreement itself, the defendant received a sum of Rs.4,00,000/-, from the plaintiff as an advance out of the sale price. The said sale agreement was also registered in the office of the Sub Registrar, as document No.234 of 1999 of the office of the Joint Sub Registrar II, of Coimbatore. The said sale agreement was produced therewith. The defendant has been evading to receive the balance of the sale price from the plaintiff and execute and register the sale deed, on one ground or the other. Therefore, the plaintiff has come forward with this suit for the recovery of the said advance of Rs.4,00,000/- together with interest at the rate of 24% per annum and cost of the suit and for other reliefs as the defendant is liable to return the said advance of Rs.4,00,000/- received from the plaintiff on 18.11.1999 to him together with cost.

(ii) As the defendant has not filed written statement, he was set ex-parte on 24.04.2003 and hence, the defendant has filed an application under Order 9 Rule 7 and Section 151 of CPC to set aside the ex-parte order dated 24.04.2003 along with copy of the written statement. The said application was numbered as I.A.(CFR).No.16275 of 2003. But, the said application was misplaced in the Lower Court and it was not numbered or not returned in time. Though, the petition has filed under Order 9 Rule 7 of CPC, along with written statement, by oversight, ex-parte decree was passed in the said suit against the respondent herein/defendant on 30.09.2003.

(iii) After knowing the fact that the ex-parte decree was passed against him on 30.09.2003, immediately, the respondent herein has filed an application in IA.No.477 of 2011, before the learned III Additional Subordinate Judge, Coimbatore, for setting aside the ex-parte decree. In the meanwhile, the complaint petition and reminder letters were sent to Principal District Judge regarding non numbering of his application, which were marked as Exs.P2 to P5 and the reply sent by Principal District Judge has been marked as EX.P6.

(iv) Meanwhile, the Civil Revision Petition has been filed under Order 9 Rule 13 of CPC before this Court in CRP.No.1094 of 2011, seeking to dispose of the application in CFR.No.15067 of 2004, and subsequently, it has been numbered as I.A.No.477 of 2011, as per the order of this Court dated 16.03.2011, in the above said CRP.

(v) At that time, it is brought to the knowledge that the said application was filed under Order 9 Rule 13 of CPC and numbered without the petition under Section 5 of the Limitation Act and hence, he has filed an application in I.A.No.231 of 2012, under Section 5 of the Limitation Act and Section 151 of CPC, before the learned III Additional Subordinate Judge of Coimbatore, on 28.01.2012, to condone the delay of 182 days between 30.10.2003 and 29.04.2004 in filing the petition to set aside the ex-parte decree dated 30.09.2003. But the defendant ought to have filed the application to set aside the ex-parte decree under Order 9 Rule 13 of CPC within 30 days from the date of decree on 30.09.2003, which was expired on 30.10.2003. The said application viz., I.A.No.231 of 2012 was allowed. As against the same, the revision petitioner/plaintiff has preferred this Civil Revision Petition.

4 Heard both the learned counsel and perused the

materials placed on record.

5 On a perusal of the records, it appears that during the course of enquiry, the application filed under Order 9 Rule 7 was returned from the Court on 06.11.2011 and the same was marked as Ex.P1, the complaint petition given to the learned Principal District Judge, on the administration side, regarding missing of petition filed under Order 9 Rule 7 of CPC, which has been filed in time has also been marked as Exs.P2 to P5 and reply given by the learned Principal District Judge, was marked as Ex.P6.

6 Taking into consideration the above facts and circumstances, this Court finds that all is not well in the Office of the Court and the Order 9 Rule 7 CPC petition was displaced and could not be traced out and the same was returned on 06.11.2011, after several complaints made to the learned Principal District Judge. Meanwhile, by over sight the Judicial Officer has passed an ex-parte decree on 30.09.2003, which was sought to be set aside in I.A.No.477 of 2011, which was numbered as per the order passed by this Court in CRP.No.1094 of 2011.

7 Admittedly, the application under Order 9 Rule 13 was

filed on 16.03.2011 without the condone delay petition and the said application was directed to be numbered as per the order passed in CRP.No. 1094 of 2011. When it is brought to the knowledge of the defendant, he has filed a petition in I.A.No.231 of 2012, under Section 5 of the Limitation Act. Since, IA.No.477 of 2011 was filed on 16.03.2011, the delay computed by the Trial Court as 182 days is correct and the reason for the delay is also convincing and hence, the Trial Court has rightly allowed the application and hence, this Court does not find any error apparent, on the face of the record.

8 In the result, the Civil Revision Petition stands dismissed and the order passed in I.A.No.231 of 2012, by the learned III Additional Subordinate Judge, Coimbatore, dated 08.10.2012 is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.02.2020

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Index : Yes / No

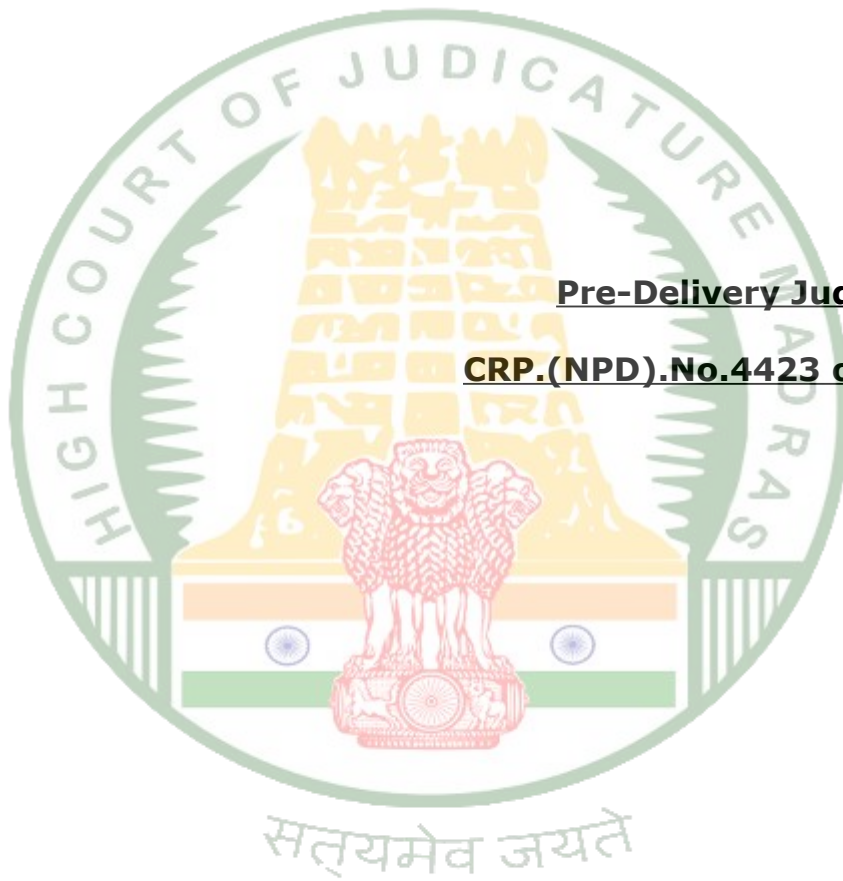
Internet : Yes

To

The III Additional Sub Court, Coimbatore.

CRP.(NPD).No.4423 of 2012
and M.P.No.1 of 2012

RMT.TEEKAA RAMAN., J
dua



Pre-Delivery Judgment
in
CRP.(NPD).No.4423 of 2012

19.02.2020

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