

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.02.2020

Order Pronounced on : 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.NPD.Nos.350, 351 & 352 of 2015
and
M.P.No.1 of 2015 &
C.M.P.Nos.12639, 12640 & 12642 of 2019

1. Ramalingam

2. Prema

... Petitioners in all CRPs

Vs.

Ranganan

... Respondent in all CRPs

Prayer :- These Civil revision petitions have been filed under Section 115 of the Civil Procedure Code to set-aside the fair and decreetal order of the learned Subordinate Judge, Tirupattur, Vellore District, dated 19.06.2014 in E.A.Nos.9, 10 & 11 of 2014 in E.P.No.18 of 2013 in O.S.No.82 of 2010 .

For petitioners
in all CRPs

: Mr. T.M. Hariharan

For respondent
in all CRPs

: Mr. M.V.Venkataseshan

ORDER

CRP.No.350 of 2015 has been filed against order dismissing the petitioners' application to condone the delay of 150 day in filing a petition to set aside the exparte order in the Execution Petition.

2. CRP.No.351 of 2015 has been filed against the order dismissing the petitioners' application filed under Order 21 Rule 106 and 151 of CPC to set aside the exparte order passed on 26.06.2013 .

3. CRP.No.352 of 2015 has been filed against the order dismissing the petitioners' application filed under Order 21 Rule 69 CPC to stay the Execution Proceedings till the disposal of the E.A.No.10 of 2014.

4. The petitioners are the judgment debtors. Earlier, the respondent filed a suit in O.S.No.82 of 2010 for recovery of money based on a pronote and the same has been decreed

exparte on 29.10.2011. Thereafter, the respondent/plaintiff filed an Execution Petition in E.P.No.18 of 2013 to execute the decree. In the above application also the petitioners were set-exparte. In order to set-aside the order, the petitioners filed an application in E.A.No.9 of 2014 to condone the delay of 150 days in filing the set-aside petition and that application came to be dismissed by the Court below on 19.06.2014. Challenging the same, CRP NO.350 of 2015 has been filed.

5. The petitioners filed another application in E.A.No.10 of 2014 to set-aside the exparte order in the Execution Petition and the same came to be dismissed by the Court below on 19.06.2014. Challenging the same CRP.No.351 of 2015 has been filed.

6. The petitioners also filed another application in E.A.No.11 of 2014 to stay all further proceedings in the Execution Proceedings till the disposal of the above petitions and same was also came to be dismissed by the Court below on 19.06.2014. Challenging the same, CRP No.352 of 2015 has been filed.

7. The learned counsel for the petitioners would submit that the petitioners borrowed a sum of Rs.30,000/- from the father of the plaintiff 12 years ago and executed a pronote. Thereafter, they discharged the entire loan, but the pronote has not been returned to them. Thereafter, on 29.07.2010, a legal notice has been issued by the plaintiff, demanding money. Immediately after receipt of the notice, the first defendant met the plaintiff and informed him about the discharge of the loan to his father and the plaintiff being an advocate informed him that he mistakenly sent the notice and no action will be taken against them. Thereafter, the first defendant received a Court summon on 29.09.2010, again, the defendants met the plaintiff. At that time, the plaintiff once again informed him that the suit has been wrongly filed against them and he will withdraw the suit. Believing his word, the petitioner did not take any further steps to contest the suit. Thereafter, they received the attachment order in the Execution Proceedings. Then only, they came to know about the exparte decree and order passed in the Execution Proceedings. Immediately, they filed the petition to set aside the exparte order in the Execution Proceedings with a petition to

condone the delay of 150 days in filing the petition to set aside the exparte order passed in the Execution Proceedings. According to the petitioners, the Executing Court without considering the issue in a proper perspective passed a cryptic and non-speaking order dismissing the applications holding that the auction has been conducted and sale has also been confirmed at this stage the exparte order cannot be set-aside. The learned counsel would further submit that the Court below ought to have considered the petitioners' objection in a proper perspective, without considering the reasons stated by the petitioners for the delay, has mechanically dismissed the application .

8. Per contra, the learned counsel for the respondent would submit that pending suit, suit summon has been served on the petitioners. But, they did not appear before the Court and hence, an exparte decree has been passed. In the Execution Proceedings also notice was served on them, but failed to appear before the Execution Court and hence, exparte order has been passed. Now, the present application has been filed as if they were not aware of the pendency of the Execution Proceedings. In the meantime, the property was brought for sale and one Venkatesan took the

property in auction, he has also paid the entire sale consideration and sale certificate has also been issued in his favour. At that time, the present application has been filed before the Court below. Considering the said circumstances, the Court below rightly dismissed the application and there is no infirmity in the order passed by the Court below.

9. I have considered the rival submissions and perused the materials available on records carefully.

10. CRP.No.350 of 2015 has been filed against the order dismissing the application to condone the delay of 150 in filing the petition to set-aside the exparte order passed in the Execution Proceedings. According to the petitioners, nearly 12 years ago, they borrowed some amount from the father of the respondent/plaintiff, and they have also discharged the loan amount, but, pronote has not been returned to them. Thereafter, the present suit has been filed based on the above said pronote. After receipt of the suit summons, the first petitioner met the plaintiff. The plaintiff, who is an advocate, promised him that the suit has been mistakenly filed and he will not prosecute the suit.

Believing his word, the petitioners did not proceed further. Now, only after receipt of the notice in the Execution Proceedings, the petitioners came to know about the exparte decree passed in the suit as well as the in Execution Proceedings, immediately, they filed the petitions to set-aside the exparte decree along with a petition to condone the delay and also filed a petition to stay all further proceedings in the Execution Petition till the disposal of the above petitions.

11. However, the above contentions are disputed by the respondent stating that even after the receipt of the suit summons, the defendants did not contest the suit and hence exparte decree has been passed. In the Execution proceedings also notice was served on them and they appeared before the Execution Court twice and thereafter, failed to appear. Hence, exparte order has been passed in the Execution Proceedings also.

12. Now, the case of the petitioners is that no notice has been served on the petitioners in the Execution Proceedings and the same was disputed by the respondent. In the above circumstances, the Court below ought to have conducted a

detailed enquiry to find out whether any notice has been served on the petitioners in the Execution Proceedings, and, whether the reason given by the petitioners is sufficient to condone the delay in filing the petition. However, the Executing Court, simply dismissed the application by a cryptic and non-speaking order stating that already the property has been put into auction and the sale was confirmed and sale certificate was also issued. When the Execution Proceedings was allowed *exparte* and the parties come to the Court with a plea that no notice has been served on them, the Execution Court has to conduct an enquiry to find out as to whether any notice served on them and during enquiry, based on records if the Court satisfied that notice was served on them, it is open to the Court to dismiss the application. Now, the Court below without conducting any such enquiry, simply dismissed the application in a cryptic and non-speaking order, which is not permissible under law. Merely because the auction conducted and sale certificate was issued, it is not a ground to dismiss the applications. Hence, in my opinion , the order passed by the Court below is liable to be set-aside for want of any reasons.

13. In the result, C.R.P.No.350 of 2015 is allowed and the order passed by the Court below in E.A.No.9 of 2014 is set aside and the matter is remanded back to the Court below with a direction to pass a detailed reasoned order on merits and in accordance with law, after considering the rival submissions. No costs. Consequently, connected miscellaneous petition is closed.

14. In view of the order passed in the C.R.P.No.350 of 2015, no further order is required in CR.P.Nos.351 & 352 of 2015. Hence, C.R.P.Nos.351 and 352 of 2015 are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

सत्यमेव जयते

10.03.2020

mrp

Index : Yes

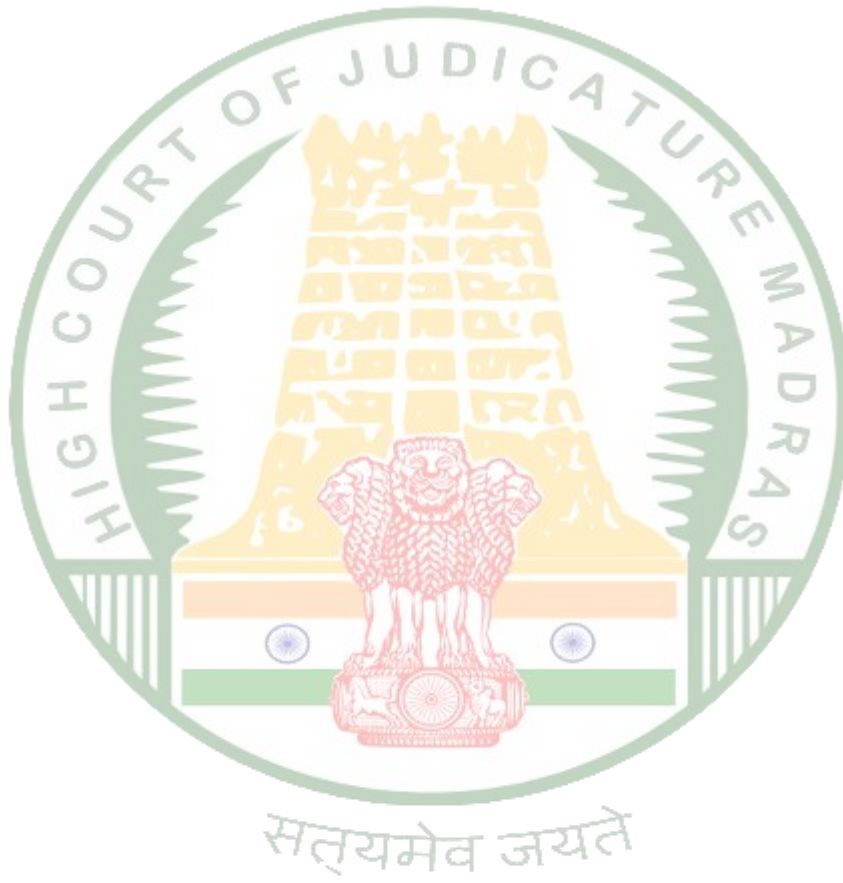
Internet : Yes

Speaking order/non speaking order

To

The Subordinate Judge, Tirupattur, Vellore District,

<http://www.judis.nic.in>



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V.BHARATHIDASAN, J.,

mrp



Pre-delivery Order in

C.R.P.NPD.Nos.350 to 352 of 2015

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