

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.No.1850 of 2018
and

C.M.P.No.10633 of 2018

R. Rukmangathan .. Petitioner
Vs.

P. Annamalai .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 30.01.2018 passed in I.A.No.9 of 2017 in O.S.No.210 of 2013 on the file of Subordinate Judge, Poonamallee.

For Petitioner : Mr. S. Vijay Anand

For Respondent : Mrs. R. Poornima

ORDER

The petitioner whose application seeking condonation of delay of 266 days in filing a petition to set aside the exparte decree was dismissed by the trial Court, has come up with this civil revision petition.

2. The suit in O.S.No.210/2013 was laid by the plaintiff seeking specific performance of an agreement of sale dated 28.08.2008. In the said suit, the defendant was served by publication and an exparte decree came to be passed on 29.01.2014. The plaintiff also filed an execution petition in E.P.No.121/2014 seeking execution of sale deed. Even in the said E.P., the Judgment Debtor was served by publication and exparte orders were granted. Finally, the plaintiff preferred E.P.No.8/2016 seeking possession. In the said E.P., notice was served on the judgment debtor, the petitioner herein on 15.03.2016, soon thereafter, the plaintiff has come up with this application seeking condonation of delay of 266 days in filing the application to set aside the exparte decree.

3. This application is resisted by the defendant contending that the reason assigned for the delay are not

sufficient. It is also contended that the defendant had evaded service in the suit as well as E.P. The trial Court on a consideration of the reasons assigned in the affidavit concluded that the defendant has not made out sufficient cause for setting aside the exparte decree and dismissed the application for condonation of delay in seeking to set aside the exparte decree. The trial Court has observed that the defendant had wantonly evaded service of notice both in the suit and E.P.No.121/2014. Aggrieved, the defendant has come up with this civil revision petition.

4. I have heard Mr.S.Vijayanand, learned counsel appearing for the petitioner and Mrs. Poornima, learned counsel appearing for the respondent.

5. Mr.Vijayanand, learned counsel appearing for the petitioner would point out that the suit itself was filed on 05.08.2013 and was decreed exparte after publication on 29.01.2014 i.e., within a period of five months. This according to him would show that the defendant has not evaded service. Even in the E.P., the defendant was served only by publication. It is only in the second E.P., for possession, the defendant was served through proper mode of service. This justifies the claim of the defendant that he was not aware of the proceedings in O.S.No.210/2013 and E.P.No.121/2014.

6. The trial Court proceeded on an assumption that the defendant has evaded service in the suit. Records relating to the modes of service attempted on the defendant prior to the exparte decree were not placed before the trial Court. The Court has not adverted to those documents. The suit being one for specific performance irreparable loss and injury would be cost to the defendant if the exparte decree is allowed to stand. It has been repeatedly held that substituted service cannot be held to be sufficient service in all cases. The Hon'ble Supreme Court as in University of Delhi Vs. Union of India and Others reported in 2019 SCC OnLine SC 1634 has pointed out that the Courts must be liberal in condoning the delay particularly, when the rights of a party would be prejudice and technical consideration should always give ways for substantial justice.

7. I am therefore, of the considered opinion that the defendant deserves a chance to defend the suit since the suit is one for specific performance. I am therefore, of the view that the delay could be condoned on payment of costs and the suit could be directed to be disposed off on merits. Civil Revision Petition is therefore allowed. No costs. Consequently, connected miscellaneous petition is closed. The order of the trial Court is set aside, the application in I.A.No.9/2017 will stand allowed on condition, the petitioner pays a sum of

Rs.5,000/- as costs to the counsel for the respondent appearing in this Court on or before 24.08.2020, failing which civil revision petition stands dismissed.

8. It is seen from the records that the defendant has also filed a written statement. On the cost being paid, the trial Court is directed to number the application filed under Order 9 Rule 13 and dispose off the same within a period of six weeks therefrom.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

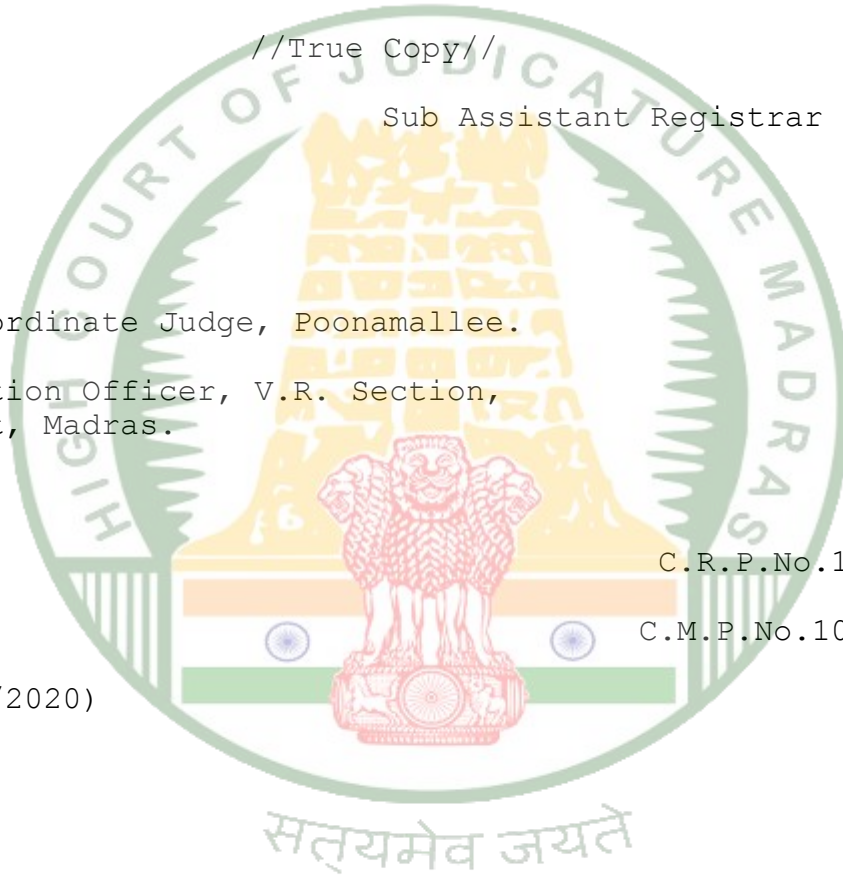
To

1.The Subordinate Judge, Poonamallee.

2.The Section Officer, V.R. Section,
High Court, Madras.

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BR(CO)
RMP(01/10/2020)



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