

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2189 of 2016

and

C.M.P.No.11395 of 2016

Perumal

.. Petitioner

Vs.

B.Kandasamy

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decreetal order dated 19.01.2015 in I.A.No.1106 of 2014 in O.S.No.1122 of 2012 on the file of I Additional District Munsiff Court, Salem.

For Petitioner : Mr.S.S.Raghavan
for Mr.R.Subramanian

For Respondent : Mr.C.Prakasam

ORDER

The matter is heard through Video Conferencing.

2.This Civil Revision Petition is filed to set aside the fair and decreetal order dated 19.01.2015 made in I.A.No.1106 of 2014 in O.S.No.1122 of 2012 on the file of I Additional District Munsiff Court, Salem.

3.The petitioner is defendant in O.S.No.1122 of 2012. The respondent filed the suit for declaration of title and for possession. In the suit, the petitioner was set exparte and exparte decree was passed on 23.10.2013. The petitioner filed I.A.No.1106 of 2014 to condone the delay of 245 days in filing the petition to set aside the exparte decree. The learned Judge by the order dated 19.01.2015 dismissed the said petition.

4.Challenging the said order of dismissal dated 19.01.2015 made in I.A.No.1106 of 2014 in O.S.No.1122 of 2012, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner submitted that the petitioner was suffering from Jaundice from first week of September 2013 and he was taking native treatment. The Doctor advised him to take bed rest.

After recovery from illness, he came to know about the exparte decree and filed petition to condone the delay in filing petition to set aside exparte decree. The learned counsel appearing for the petitioner further submitted that the Hon'ble Apex Court has held that application to condone the delay must be considered liberally and the parties must be given an opportunity to put forth their case on merits. He further contended that the learned Judge passed the decree without application of mind. Any decree passed without complying Order XX Rule 4 of C.P.C. is not the judgment as held by this Court and relied on the order reported in **2015 (4) CTC 673, [G.Selvam & others Vs. Kasthuri (deceased) and others]**. He further submitted that by dismissing the petition, the learned Judge has thrown out the case of the petitioner at the threshold itself. Courts have power to allow the petition on payment of cost and prayed for allowing the petition and also for allowing the Civil Revision Petition.

6.Per contra, Mr.C.Prakasam, learned counsel appearing for the respondent contended that after entering appearance through counsel, the petitioner from 27.12.2012 to 05.10.2013 did not file written statement inspite of number of opportunities given to him. The reason given by the

petitioner is not correct. The learned Judge has considered the entire materials and dismissed the petition. The judgment and decree of the learned Judge is in consonance with Order XX Rule 4 of C.P.C., as the learned Judge has considered the evidence let in by the respondents and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

8. The learned counsel appearing for the petitioner contended that ex parte decree passed by the Court is not a decree as per the provisions of C.P.C. The learned Judge has not complied with Order XX Rule 4 of C.P.C. The said provision reads as follows:

Order XX Rule 4 of C.P.C.:

"4. Judgments of Small Cause Courts. –

(1) Judgments of a court of small causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other courts— Judgments of other courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the

reasons for such decision."

9. As per Order XX Rule 4 of C.P.C., the judgment of the Court must contain a concise statement of the case, points for determination, the decisions thereon and the reason for such decision. As per this Rule, a judgment which does not set out all the points arising for determination and does not discuss the evidence is not a judgment and for that reason, the judgment is vitiated. The judgment atleast must contain a statement of grounds on which the decree or order is passed. In the order reported in **2015 (4) CTC 673**, *cited supra* relied on by the learned counsel appearing for the petitioner, this Court considered the judgment of the Hon'ble Apex Court reported in **2012 (5) SCC 265, [C.N. Ramappa Gowda Vs. C.C. Chandregowda (dead) by LRs and another]** and judgment of the Division Bench of this Court reported in **2013 (4) CTC 545, [Chitrakala Vs. P.Mahesh and others]** and held that the burden of proof lies on the plaintiff, irrespective of there being any Written Statement or evidence of rebuttal, plaintiff to succeed in Suit only on the basis of strength in his case and not on the basis of weakness in Defendant's case. It was also held that Court cannot pass a decree on the blind averments without substantiated. Considering Order XX Rule 4 of C.P.C., in the above two judgments of this Court, this

Court set aside the judgment which did not comply the said provision and remanded the matter to Trial Court for fresh trial. The ratio in the judgments of the Hon'ble Apex Court and the Division Bench of this Court referred to above and the ratio in the order reported in **2015 (4) CTC 673, [G.Selvam & others Vs. Kasthuri (deceased) and others]** are squarely applicable to the facts of the present case. The exparte decree passed by the Trial Court is liable to be set aside. At the same time, it is to be taken note of the fact that petitioner was not vigilant enough to contest the case and also take immediate steps to set aside the exparte decree and has not given any valid reason to condone the delay. He has approached the Court after delay of 245 days in filing the petition to set aside the exparte decree. In the affidavit filed in support of the petition, the petitioner has not given any particulars with regard to his illness or when he recovered from his illness. The petitioner has not given any valid or acceptable reason to condone the delay.

10. In view of such attitude and failure to take immediate steps, the petitioner must be put on cost. Accordingly, the Civil Revision Petition is allowed on payment of cost of Rs.5,000/- (Rupees Five Thousand Only) payable to "Prasanthi old age Welfare Home" [SB Account No.2604 101 000]

307, Canara Bank, Nandanam Branch, Chennai-35 bearing IFSC Code CNRB0002604], within a period of two weeks from the date of receipt of a copy of this order. On such payment, the exparte decree dated 19.01.2015 made in I.A.No.1106 of 2014 in O.S.No.1122 of 2012 will be set aside and the suit will be taken up for hearing. The petitioner is directed to file written statement within a period of two weeks thereafter. Failure on the part of the petitioner to pay the above costs, the Civil Revision Petition shall stand dismissed automatically. The suit is of the year 2012 and hence the I Additional District Munsif, Salem is directed to dispose of the suit as expeditiously as possible.

11.In the result, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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24.09.2020

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Index : Yes / No

Internet : Yes / No

To

The I Additional District Munsif,
Salem .

7/8

V.M.VELUMANI, J.

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