

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

CRP(NPD).Nos. 3972 & 3973 of 2019

1.Manoharan
2.Kaliammal
3.Malathi
4.Lakshmi

..Petitioners in both CRPs/
Defendants

Vs

Poomalai Naicker

.. Respondent in both CRPs/
Plaintiff

Common Prayer : Civil Revision Petitions are filed under Section 115 of Civil Procedure Code against the fair and decreetal order passed by the Sub Judge, Attur in I.A.No. 16 of 2008 & I.A. No.17 of 2008 in O.S.No. 35 of 2000, dated 08.04.2011.

For Petitioners : Mr.S.Kamadevan
(in Both CRPs)
For Respondent : Mr.M.Senthilvadiyu
(in Both CRPs) for K.R.Samratt.

COMMON ORDER

These Civil Revision Petitions are filed against fair and decreetal order passed by the Sub Judge, Attur in I.A.No. 16 of 2008 & I.A. No.17 of 2008 in O.S.No. 35 of 2000, dated 08.04.2011.

2. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

3. The learned counsel for the revision petitioners submitted that the respondent herein/plaintiff has filed a suit in O.S.No. 35 of 2000 for specific performance against the revision petitioner herein. In the aforesaid suit, exparte decree was passed by the trail Court against the revision

petitioners. Hence the revision petitioners have filed an application to set aside the exparte decree along with the application to condone the delay of 366 days in filing the above application in I.A. Nos. 17 of 2008 and 16 of 2008 respectively. Both the applications were dismissed by the Court below. Hence these Civil Revision Petitions.

4. The learned counsel appearing for the respondent submitted that the revision petitioners have not adduced any satisfactory reasons to condone the delay of 366 days in filing the application to set aside the exparte decree. According to the respondent/plaintiff, the aforesaid suit was filed for specific performance based on the sale agreement entered between parties. The revision petitioners have wantonly dragged the matter to the maximum extent and finally when they could not get any further adjournments, left the above suit to be decreed exparte wantonly by saying reporting no instructions for the petitioners through their counsel. Considering all these aspects the Court below has rightly rejected the applications filed by the revision petitioners herein.

5. On perusal of the affidavit filed by the revision petitioners before the Court below, it has been stated that the second defendant /1st petitioner herein could not attend the court on 01.11.2005 due to illness of Jandunce followed by Chicken quinoa disease and he came to know that the aforesaid suit was set exparte and the exparte decree was passed by the Court below on 14.11.2005. thereafter, he could not contact his counsel to file application to set aside the exparte decree. The Court below disbelieve the reasons stated by the revision petitioners and dismissed the said applications filed by the revision petitioners. His ailment was supported and corroborated by the PW2 and PW3.

6. Hence, considering the reasons stated by the revision petitioners in the affidavit filed before the trial Court and taking into consideration the evidence adduced before the trial Court, which substantiated the claim made in the affidavit, this Court is of the considered opinion that the orders passed by the Court below are liable to be set aside in view of the decision rendered by the Hon'ble Supreme Court in the case of Esha Bhattacharjee Vs. Raghunathpur Nagor Academy reported in (2013) 12 SCC 659.

7. The learned counsel for the revision petitioners has agreed to pay costs as imposed by this Court to condone the delay in filing the application before the Court below. The learned counsel for the revision petitioners further submitted that the Court below shall not execute the sale deed in favour of the respondents in the Execution Petition, which is pending

before the Court below.

8. In view of the facts stated above and by consent of the both the learned counsel appearing for the parties concerned, these Civil Revision Petitions are allowed with the following directions;

(i). Orders passed by the Court below in I.A. Nos. 16 of 2008 & 17 of 2008 in O.S. No. 35 of 2000 dated 08.04.2011 are set aside and consequently allowed the above said I.As on the following terms;

(ii). The revision petitioners shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand Only) towards costs to the respondent within period of two weeks from the date of receipt of a copy of this Order.

(iii). After such payment by the revision petitioners, the Court below shall pass orders in the application to set aside the exparte decree.

(iv). In the event of the revision petitioners complying with the conditions stated above, and the applications are allowed, by taking note of year of the Suit which is 2000, the Court below is directed to dispose of the aforesaid Suit as expeditiously as possible, in any event, within a period of six (6) months thereafter.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Sub Judge,
Attur.

+2ccs to Mr.K.R.Samratt, Advocate, Sr.Nos.24242 & 24243
+1cc to Mr.S.Kamadevan, Advocate, Sr.No.24259

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MR(CO)
GS(31/08/2020)