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C.R.P(NPD).No.506 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No.506 of 2019

Indian Bank,
ARMB - II,
Rep by its AGM,
55, Ethiraj Salai,
Chennai - 600 008.

... Petitioner

Versus

1.B.K.Munusamy
2.Manohar Prasad,
Proprietor
M/s.Asia Capital Consolidated Fund,
No.2, Sarangapani Street,
T.Nagar, Chennai - 600 017.

3.J.D.A.Consultancy Services Private Limited,'

Rep. by its Managing Director,
Casa Blanks Complex, 1st Floor,
Egmore, Chennai - 600 008.

4.Adhimoolam
5.Kannammal
6.Muniammal
7.Padmavathy
8.Ayyakannu
9.Navaneetha Ammal
10.Baby Ammal
11.Subramani



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12.Saroja Ammal

13.Ramesh

14.Murugappa Naicker

15.Ganagadurai Naicker

16.Murugesu Naicker

17.Kuppuswamy Naicker

18.Subramaniya Naicker

19.Elumalai Naicker

20.M/s.Ravishankar Industries Private Limited,

Rep. by its Managing Director,

(formerly known as Ravishankar Films Pvt. Ltd),

No.2, Sarangapani Street,

T.Nagar, Chennai - 600 017.

21.Manohar Prasad

22.M/s.Asian Capital Consolidates and Holding

Private Limited,

Rep. by its Managing Director,

2, Sarangapani Street,

T.Nagar, Chennai - 600 017.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 11.12.2018 made in I.A.No.5141 of 2018 in O.S.No.8701 of 2010, on the file of the II Additional Judge, VII Additional City Civil Court (FAC) Chennai.

For Petitioner : Mr.Jayesh B.Dolia
For Respondents : M/r.M.L.Ramesh for R1
No Appearance for R2, R20, R22
Mr.Shubharanjani for R3
R14 to R19 died
R21 person not found



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ORDER

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This Civil Revision Petition is directed to set aside the order dated 11.12.2018 made in I.A.No.5141 of 2018 in O.S.No.8701 of 2010, on the file of the II Additional Judge, VII Additional City Civil Court (FAC) Chennai.

2.Heard both sides.

3.The revision petitioner is the first defendant in the suit in O.S.No.8701 of 2010 which was filed by the first respondent/plaintiff for the relief of declaration that the sale certificate No.1716 of 2007, dated 03.01.2007 issued by the Debt Recovery Tribunal - I, Chennai under interim DRC.No.187 of 2001 as null and void in O.A.No.375 of 1997.

4.In the suit nearly 22 defendants were added as the necessary parties. The revision petitioner is a Indian Bank, who is arrayed as the first defendant in the said suit, though the said bank was represented by their counsel before the trial Court. During the pendency of the suit proceedings there were batch of connected matters arose between the parties and some of the cases were transferred to City Civil Court, Chennai. During that period,



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the counsel for the bank submits that the papers are mingled with the other matters and they were not able to follow the Court proceedings. So the bank remained ex-parte and the ex-parte decree was passed on 18.11.2016. Thereafter, after receiving the notice in I.A.No.3045 of 2017 filed by the plaintiff for return of documents, the bank came to know about the said ex-parte decree. So, they immediately took steps to set aside the decree, but there is a delay of 330 days. Hence, they filed application to condone the delay in I.A.No.5145 of 2018 before the trial Court. The said application was vehemently contested by the plaintiff.

5.On hearing both sides, the trial Judge dismissed the said petition concluding that the reason stated by the bank is not sufficient. Aggrieved by that, the bank preferred this revision.

6.The learned counsel for the petitioner submits that with regard to the suit sale certificate there was a batch of cases filed and transferred to City Civil Court, Chennai. During that period the papers were mingled with other bundles and the said negligence was not wanton one. Hence, he prayed to condone the delay.



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7.The learned counsel appearing for the respondent would submit that the petition was filed by the Advocate and it should not be acceptable for the reason that the bank is a National Institution, which owes great responsibility to the public. However, he would further contended that the connected matters were ends in his favour, so there is no necessity to set aside the decree. This fact is also strongly objected by the revision petitioner contending that they are having valid defence to prove their claim in the suit.

8.Admittedly, both the parties admits that the number of cases related to the same property and some of them transferred to City Civil Court, Chennai. Though the reason stated by the bank is not a convincing one, but at the same time, due to the negligence act of the Advocate the litigant should not be put into hardship. It is also brought to the notice of the Court after filing of the I.A.No.3045 of 2017 by the plaintiff for return of documents, immediately, coming to know about ex-parte order, the 1st defendant/bank filed an application to condone the delay. A liberal attitude should be taken for consideration to adjudicate the relief between the parties. The trial Court is the first remedy, if it is refused, the party to the suits is put to much hardship leading to multiplicity of proceedings.



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9. Without considering the legal aspect, the trial Judge erroneously dismissed the petition. Hence, the order passed by the Trial Court in I.A.No.5141 of 2018 is set aside. Accordingly, this revision is allowed on payment of costs of Rs.3,000/- to the plaintiff within a period of two weeks from the date of this order, failing which, the petition will be dismissed after payment of the cost.

10. This Civil Revision Petition is disposed of. The trial Judge is directed to dispose of the matter within a period of three months on merits. Consequently connected Miscellaneous Petition is Closed. No costs.

27.10.2021

Internet : Yes / No

Index : Yes / No

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To

The II Additional Judge,

VII Additional City Civil Court (FAC) Chennai.



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T.V.THAMILSELVI, J.

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