

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.1310 of 2018
and C.M.P.No.6796 of 2018

1.S.Saraswathi
2.Minor.S.Dineshkumar
3.Minor.S.Vignesh
(Minors 2 and 3 represented by their Mother, the 1st petitioner herein)
.... Petitioners

Vs

D.Vijayan
.... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 10.01.2018 made in I.A.No.575 of 2012 in O.S.No.100 of 2006, on the file of Principal Subordinate Judge, Vellore, by allowing the present Civil Revision Petition.

WEB COPY

For Petitioners : Mr.A.Gouthaman

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed to set aside the order and decretal order dated 10.01.2018 made in I.A.No.575 of 2012 in O.S.No.100 of 2006, on the file of Principal Subordinate Judge, Vellore.

2. The petitioners are the plaintiffs and the respondent is the defendant. The petitioners filed a suit for specific performance. After receipt of summons in the suit, the respondent failed to appear before the trial Court and as such, the respondent was set exparte and the exparte decree was passed on 05.01.2015. Thereafter, the petitioners filed a petition for execution. In the execution proceedings, the respondent was served notice and only thereafter, he came to understand about the exparte decree passed against him.

3. On perusal of the affidavit filed in support of the condone delay petition, it is revealed that the respondent was working at Bombay. Therefore, no notice was served on the respondent and as such, the trial Court ordered substituted service in daily Newspaper in Tamilnadu. The

said Newspaper was not circulated at Bombay and as such, he has no knowledge about the pendency of the suit and therefore, he could not appear before the trial Court.

4. Considering the above facts and circumstances, the trial Court allowed the petition to condone the delay of 543 days. Aggrieved by the same, the present Civil Revision Petition has been filed by the petitioners.

5. The only contention raised by the petitioners is that after the exparte decree, the sale deed was executed by the Court below in favour of the petitioners herein. Therefore, at that juncture, if the exparte decree is set aside, it would cause great prejudice to the petitioners.

6. As stated supra, only because of the reasons stated in the affidavit filed in support of the condone delay petition the respondent could not appear before the trial Court. Therefore, the trial Court has rightly allowed the petition and this Court finds no infirmity or irregularity in the order passed by the Court below.

G.K.ILANTHIRAIYAN. J.

rna

7. Accordingly, this Civil Revision Petition is dismissed.
Consequently, connected Miscellaneous Petition is closed. No order as to costs.

16.04.2021

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

To

The Principal Subordinate Judge,
Vellore.

C.R.P.(PD).No.1310 of 2018
and C.M.P.No.6796 of 2018

सत्यमेव जयते
WEB COPY