



C.R.P. (NPD) No.821, 823 & 824 of 2021
and CMP Nos.6866, 6869 & 6870 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) Nos.821, 823 & 824 of 2021
and CMP Nos.6866, 6869 & 6870 of 2021

1. Velusamy Naidu

2. Maheshkumar .. Petitioners 1& 2 in CRP 821/2021

Kalpana

Selvakumar .. Petitioners 1 & 2 in CRP 823/2021

Amaravathi Gounder @ Vellaisamy

Rajeswari

Kalimuthu

Kalyanasundaram .. Petitioners 1 to 4 in CRP 824/2021

Vs.

Ramathal (Died)

1. Murugesan

2. Valarmathi

1/8



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3. Ravichandran

.. Respondents in all the petitions

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order dated 07.12.2019 made in (i) I.A.No.1374 of 2019 (ii) I.A.No.1375 of 2019 and (iii) I.A.No.1376 of 2019 respectively in O.S.No.667 of 2008 on the file of the District Munsif Court, Udumalpet.

For Petitioners : Mr. S.Arjun
(in each of the petitions)

For Respondents : Mr. D.R.Arunkumar
(in all the petitions)

COMMON ORDER

Challenge in these three revisions is to the orders passed by the learned District Munsif, Udumalpet, dismissing applications filed by the petitioners in IA Nos.1374, 1375 and 1376 of 2019. The petitioners are defendants in OS No.667 of 2008, which is a suit for declaration and recovery of possession. They had purchased various portions of the suit properties which numbered about 12 items on various dates and they have



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been shown as the defendants in the suit. The petitioners were called absent and set *exparte* on 24.06.2010 and 09.01.2011.

2. The reasons assigned for the absence on the said dates is the illness of one of the parties who was said to be looking after the litigation on behalf of others. It was also claimed that on the date when these applications were filed, the trial had not commenced. The petitioners who are arrayed as defendants in the suit being purchasers of the various portions of the property, would contend that, unless the *ex-parte* order is set aside, they will be put to irreparable loss.

3. These applications were resisted on the ground that there was no sufficient cause for setting aside the *ex-parte* order. It was also contended that there is huge delay in filing the applications. The learned District Munsif accepted the defence and dismissed the applications.

4. I have heard Mr.S.Arjun, learned counsel appearing for the petitioners in each of the petitions and Mr.D.R.Arunkumar, learned counsel



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appearing for the respondents in all the petitions.

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5. Mr. S.Arjun, learned counsel appearing for the petitioners would vehemently contend that the very valuable rights of the petitioners would be effected. The vendors of the petitioners are related to the plaintiffs. If the *ex-parte* orders are not set aside, there is every possibility of the vendors of the petitioners even colluding with the plaintiffs and defeating the rights of the petitioners under the various sale deeds. He would also contend that since the trial has not commenced and the applications being one to set aside the *ex-parte* order filed under Rule 7 of Order 9 of the Code of Civil Procedure, the Trial court must have adopted a liberal approach and allowed the application.

6. Contending contra, Mr.D.R.Arunkumar, learned counsel appearing for the respondents would submit that there is a huge delay and there is no reason given for not moving the Trial Court earlier in point of time. He would also submit that the reasons assigned for the absence on the dates when the petitioners were set *ex-parte* are also not satisfactory.



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7. It is not in dispute that the petitioners are filed the written statement along with applications. It is also not in dispute that the trial had not commenced when these applications were filed. Rule 7 of Order 9 CPC which provides for setting aside *ex-parte* orders requires the applicants to assign a good cause for previous non appearance, whereas, Rule 9 of Order 9 which provides for setting aside *ex-parte* decrees require the applicant to assign sufficient cause for non-appearance. The difference in the language employed in these two provisions would itself show that the legislature did not intend adoption of the same standard of sufficiency of the cause for setting aside orders passed *ex-parte*. The Courts have been liberal in considering the term good cause used in Rule 7 of Order 9 CPC, has opposed to the term sufficient cause used in Rule 9 of Order 9 of the Code of Civil Procedure.

8. The fact that the applications were filed at a later point of time cannot detain the Court from examining the cause that is shown for the absence. Once some reasonable cause is shown for the absence on the day when the parties were set *ex-parte*, Court will have to set aside the order and



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proceed on merits. Even in cases of applications under Section 5 of the Limitation Act, where the Limitation Act insists upon a sufficient cause being shown for condonation of delay, Courts have repeatedly held that Court must be liberal in construing the cause shown.

9. I am therefore of the opinion that the Trial Court was not right in adopting a strict standard and requiring the petitioners to make out a sufficient cause as required under Rule 9 instead of a good cause as required under Rule 7 of Order 9 of the Code of Civil Procedure. The trial had not commenced when the applications were filed and the petitioners have also shown their *bona fides* by filing the written statement along with these applications. I am therefore of the considered opinion that they should be given an opportunity to contest the suit.

10. However taking note of the delay, the plaintiffs will have to be compensated for the delay. I am therefore of the opinion that all these applications could be allowed on payment of costs. I fix the costs Rs.5,000/- per application payable on or before 10.12.2021. The Civil



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Revision Petitions are therefore **allowed** on condition that the petitioners will pay cost of Rs.5,000/- per revision to the counsel for the respondents in this Court on or before 10.12.2021, failing which the Revisions will stand dismissed.

11. On such payment, the applications in IA Nos.1374, 1375 and 1376 of 2019 will stand allowed, the *ex-parte* orders will stand set aside, the written statements filed along with these applications will be taken on the record and the Court will proceed with trial on merits. Consequently, the connected miscellaneous petitions are closed. No costs.

15.11.2021

Index: No

Internet: Yes

Speaking order

jv

To

1. The District Munsif,
Udumalpet.
2. The Section Officer, V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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