

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3751 of 2015

Babu

.. Petitioner

Vs.

1.Balasamy (died)

2.Santha

3.Balasubramaniyan

4.Baskar

.. Respondents

(Respondents 2 to 4 brought on record as legal heirs of the sole respondent viz., Balasamy vide Court order dated 16.03.2021 made in C.M.P.Nos.12670, 12673 and 12674 of 2020 in C.R.P.(NPD)No.3751 of 2015)

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 04.07.2015 in

I.A.No.981 of 2013 in O.S.No.317 of 2005 on the file of the Sub Court,
Namakkal.

For Petitioner : Mr.K.Govindarajan

For R2 to R4 : Mr.S.R.Varunkumar
for Mr.C.Jagadish

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the fair and decretal order dated 04.07.2015 in I.A.No.981 of 2013 in O.S.No.317 of 2005 on the file of the Sub Court, Namakkal.

2.The petitioner is defendant and 1st respondent is plaintiff in O.S.No.317 of 2005 on the file of the Sub Court, Namakkal. Pending Civil Revision Petition, the 1st respondent died and his legal heirs were impleaded as respondents 2 to 4. The 1st respondent filed the said suit for specific performance of agreement of sale dated 25.11.2000. The suit summon and notices sent through post were not served on the petitioner and after substituted service by effecting paper publication, the suit was

decreed exparte. The 1st respondent filed Execution Petition. After execution of the sale deed by the Court, he took possession of the suit property by filing R.E.P.No.74 of 2007. The petitioner filed I.A.No.981 of 2013 to condone the delay of 2658 days in filing the petition to set aside the exparte decree.

3. According to the petitioner, he did not execute any agreement of sale in favour of the 1st respondent. The 1st respondent's son and his daughter-in-law were running chit fund in the name and style of 'Sri Anjaneya Chit Funds Private Limited'. The petitioner was a member in the said chit fund and he was a successful bidder in one chit. In order to pay the money, the 1st respondent's son insisted the petitioner to deposit the title deeds of his property and sign in the blank papers. On completion of chit, the petitioner sought for return of documents deposited by him. The petitioner was informed by the son of the 1st respondent that the Chit Company was dissolved and all the documents were with the Official Liquidator at Kuralagam, Chennai and promised to

get the documents, when he goes to Chennai. The petitioner further submitted that after 2003, he is not residing in Namakkal and was residing in Tiruppur from 2003 – 2009. No suit summon was served on him. Without serving any summon to the petitioner, the 1st respondent obtained ex parte decree. Only in the year 2013, when the petitioner obtained Encumbrance Certificate, he came to know about the ex parte decree and sale of his property by the Court. Immediately, he filed petition to set aside the ex parte decree along with the present petition to condone the delay in filing the petition to set aside the ex parte decree.

4.The 1st respondent filed counter affidavit denying all the averments made in the affidavit and stated that suit summons were sent to the petitioner on number of occasions and the same were returned. In view of the same, paper publication was effected and ex parte decree was passed. The 1st respondent filed E.P. and the Court executed the sale deed. The 1st respondent took possession of the property. At that stage, petitioner filed present petition. If the delay is condoned, the 1st

respondent will be put to irreparable loss and hardship and prayed for dismissal of the said I.A.

5.The learned Judge considering the materials available on record, dismissed the I.A. holding that the petitioner has not explained the reason for not taking any steps even after coming to know of the dissolution of the chit fund.

6.Against the said fair and decretal order dated 04.07.2015 in I.A.No.981 of 2013 in O.S.No.317 of 2005 on the file of the Sub Court, Namakkal, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that the learned Judge failed to properly appreciate the endorsement made in the suit summons that the petitioner has left the place and in the notice sent through post also, it was endorsed that the petitioner has left. The

learned Judge erred in coming to the conclusion that the petitioner refused suit summon on 23.01.2006, when the petitioner was not residing in the said address. The decree passed by the learned Judge is not in accordance with the provisions of the Civil Procedure Code. The learned Judge has not stated any reason for granting decree. The learned Judge erred in holding that the petitioner has not proved that he was away from Namakkal. The petitioner has filed Exs.A1 to A5 to prove that he was in Tiruppur from the year 2003 – 2009. The learned Judge erred in holding that the petitioner has not taken any steps to get return of the documents given as security for chit amount. The order of the learned Judge suffers from material irregularity and the same is liable to be set aside.

8.In support of his contentions, the learned counsel relied on the judgments reported in **2011 (3) CTC 168 (Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.)** and **2021 (3) CTC 850 (Meenatchi vs. Andal)** and submitted that the learned Judge failed to follow the Order XX Rule 4 (1) of C.P.C. that every judgment should

contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. A judgment which does not contain the minimum facts, the point for determination, the evidence adduced, the application of those facts and evidence for deciding the issue would not qualify it to be called as 'judgment'. The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree, in case the defendant is absent. In the present case, perusal of the judgment would show that there was total non-application of mind on the part of the learned Subordinate Judge, when the suit filed for specific performance was decreed exparte. Even the statutory requirement regarding readiness and willingness of the plaintiff has not been gone into, there is no finding recorded in the judgment and prayed for allowing the Civil Revision Petition.

9.The learned counsel appearing for the respondents contended that the suit summons and notices sent to the petitioner were not served on him in the usual course. The trial Court permitted the 1st respondent to serve the suit summon by effecting paper publication. Even after paper publication, there was no representation on behalf of the petitioner and he did not appear before the trial Court. The petitioner was in gross negligence and there was deliberate inaction on his part in not receiving the original documents from the 1st respondent. The learned Judge considering the materials available and the documents filed by the respondents, passed the decree in favour of the 1st respondent and rightly dismissed the I.A. The petitioner has not given valid reason for condoning the delay of 2658 days and prayed for dismissal of the Civil Revision Petition. In support of his contentions, the learned counsel relied on the following decisions:

- (i) **2001 (4) CTC 722 (Kandaswamy and four others vs. Krishnamandiram Trust, Karur);**
- (ii) **2007 (2) CTC 643 (G.Jayaraman vs. Devarajan);**

- (iii) **2015 SCC Online Mad 6935 (P.R.Ravichandran and others vs. K.Aswani Kumar);**
- (iv) **(2015) 1 SCC 680 (H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another).**

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

11. From the materials available on record, it is seen that the suit was filed by the 1st respondent for specific performance of agreement of sale. The petitioner did not appear and contest the suit. After serving summon by substituted service, the suit was decreed exparte. It is the case of the petitioner that from the year 2003, he was residing in Tiruppur and he was not residing in Namakkal. To substantiate his contention, he has filed and marked ration card, gas connection card, Passbook, Voter I.D. card and Identity card issued by Tiruppur Social Welfare Board as

Exs.A1 to A5 before the learned Judge. The learned Judge verified the Court records and found that summons sent through the Court and post were returned with endorsements as “not residing”, “left”, “refused”, “left without instruction” and “not claimed”. In two of the endorsements, the learned Judge has stated that the petitioner refused the suit summon and the same has been recorded by the Bailiff in the presence of the witnesses. When the case of the petitioner that he was not residing in Namakkal and was residing in Tiruppur and filed documents to prove the same, it is for the respondents to prove that the petitioner was residing in Namakkal during that time and refused suit summon sent through Court by examining the Bailiff, who made the endorsement. The learned Judge failed to consider this fact and the documents filed by the petitioner.

12.Further, it is well settled that even if the exparte decree is passed, the Court has to consider the plaint averments and the documents filed by the plaintiff, give reasons for accepting the case of the plaintiff and deliver the judgment by giving reasons. In the present case, the

learned Judge has not complied with the provisions of the Civil Procedure Code, while passing the exparte decree. The Division Bench judgments relied on by the learned counsel appearing for the petitioner reported in **2011 (3) CTC 168 and 2021 (3) CTC 850** cited supra are squarely applicable to the facts of the present case.

13.Considering the facts and also the contentions of the petitioner that he did not execute agreement of sale, he signed in blank papers and handed over the original document of title deeds as security for the amounts received by him in the chit transaction to the 1st respondent's son, it will be in the interest of justice that an opportunity must be given to the petitioner to put forth his case. At the same time, it is to be taken into account that the petitioner was not diligent enough to get back his title deeds for 7 ½ years and the petitioner must be put on cost to compensate the prejudice that will be caused to the respondents.

14.Considering all the above facts, the impugned order of the learned Judge dismissing I.A. for condoning the delay is liable to be set

aside and is hereby set aside. I.A.No.981 of 2013 in O.S.No.317 of 2005 is allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the counsel for the respondents within a period of four (4) weeks from the date of receipt of a copy of this order. On such payment, I.A.No.981 of 2013 will be allowed. The learned Judge is directed to number the I.A. filed to set aside the exparte decree and decide the same on merits. If the petitioner fails to pay the cost within the time limit fixed by this Court, the impugned order of the learned Judge dated 04.07.2015 made in I.A.No.981 of 2013 will be restored.

15. With the above directions, the Civil Revision Petition stands allowed. No costs.

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Index : Yes/No
Internet: Yes/No
kj

To
The Subordinate Judge
Namakkal.

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