



CRP.PD.No.933/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.933/2019 & CMP.No.6069/2019

[Hybrid Mode]

Bangaru

.. Petitioner /
Defendant

Vs.

Anandakumar

.. Respondent /
Plaintiff

Prayer:- Civil Revision Petition filed under Section 115 CPC against the order and decretal order dated 25.01.2019 made in IA.No.780/2016 in OS.No.168/2014 on the file of the Court of the Subordinate Judge, Pollachi.

For Petitioner : Mr.R.Nandhakumar

For Respondent : Mr.M.N.Balakrishnan



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ORDER

- (1) This Civil Revision Petition is directed against the order dated 25.01.2019 made in IA.No.780/2016 in OS.No.168/2014 on the file of the learned Subordinate Judge, Pollachi.
- (2) The respondent herein, as plaintiff, filed the suit in OS.No.168/2014 for specific performance of an Agreement of Sale dated 25.07.2011 alleged to have been executed by the revision petitioner/defendant in favour of the respondent/plaintiff and also for other consequential reliefs.
- (3) It is admitted that the revision petitioner/defendant did not receive summons. However, the Court below proceeded to issue notice by paper publication. This has probably resulted an ex-parte decree on 15.07.2016 in the suit filed by the respondent/plaintiff.
- (4) It is stated by the revision petitioner that he came to know about the ex-parte decree only when the respondent/plaintiff filed an Execution Petition in EP.No.52/2016. Thereafter, the revision petitioner/defendant filed an application to set aside the exparte decree in OS.No.168/2014 along with IA.No.780/2016 to condone



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the delay of 350 days in filing the petition to set aside the exparte decree. The said petition was dismissed on the ground that there was no proper and plausible explanation for the inordinate delay of five months as the revision petitioner/defendant came to know about the exparte decree on 21.03.2016 and that the Interlocutory Application to set aside the exparte decree was filed only on 16.08.2016. Aggrieved by the dismissal of IA.No.780/2016, the present Civil Revision Petition is filed by the revision petitioner/defendant.

- (5) It is true that the revision petitioner/defendant did not file the application within a reasonable time after coming to know about the exparte decree. It is admitted that the Trial Court proceeded with the trial on the basis of substituted service by paper publication. It is true that the petitioner has not given proper explanation for the delay in filing the application. It is stated by the revision petitioner/defendant that the respondent/plaintiff did not give the correct address of the revision petitioner/defendant and that the exparte decree was on account of such mischief. This



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Court is unable to find any reason to hold that the revision petitioner/defendant was wilfully abstained from appearing.

- (6) It is well settled that the Court should show some leniency to the litigants when the Court examine whether sufficient cause has been shown for the non-appearance of the party before the Court. Whenever a person offers some explanation for the delay, the Court will be lenient in accepting such explanation.
- (7) In the present case, the Lower court has found that no proper reason has been given. However, there is no finding that the non appearance of the revision petitioner/defendant was wilful and it can be considered as misconduct so as to disable the revision petitioner/defendant from getting the Court's indulgence. Since it is stated that the revision petitioner's address was wrongly given by the plaintiff/respondent in the plaint and the exparte decree was on account of such intentional suppression of material fact, this Court is of the view that the revision petitioner/defendant should be given an opportunity to defend the suit on merits. However, the revision petitioner/defendant could have avoided the delay by



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showing due diligence in filing a petition with delay.

- (8) Considering the facts and circumstances of the case, this Court is inclined to allow this Civil Revision Petition.
- (9) Accordingly, the Civil Revision Petition is **allowed** and the order dated 25.01.2019 made in IA.No.780/2016 in OS.No.168/2014 on the file of the Court of the Subordinate Judge, Pollachi, is **set aside**. **However, the revision petitioner/defendant is directed to pay a sum of Rs.5,000/- [Rupees Five Thousand only] as cost within a period of two weeks from the date of receipt of a copy of this order, either to the respondent/plaintiff or to the learned counsel for the respondent/plaintiff.**
- (10) The Trial Court is directed to expedite the trial and dispose of the suit in OS.No.168/2014 on merits within a period of six months from the date of receipt of a copy of this order.

07.12.2021

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S.S.SUNDAR, J.,

AP

To

The Subordinate Judge
Pollachi.

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