



C.R.P.(N.P.D).No.1801 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021

PRONOUNCED ON : 12.11.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(N.P.D)No.1801 of 2021 and
C.M.P.No.13987 of 2021**

Sridhar Babu

...Petitioner

Vs.

1.V.Sundaram @ Devasundaram

2.S.Kumar

3.C.Franchis

4.R.Kumaresan

...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 17.03.2021 made in I.A.No.1 of 2019 in O.S.No.8330 of 2011 on the file of the learned XVIII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Parthasarathy Senior Advocate
for Mr.Krishna pradeep

For Respondents : M/s.P.C.Geethammal for Caveator
for R1 and R2



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ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.1 of 2019 in O.S.No.8330 of 2011 on the file of the learned XVIII Additional Judge, City Civil Court, Chennai.

2.I.A.No.1 of 2019 was filed under Section 5 of the Limitation Act to condone the delay of 2462 days in filing the petition to set aside the *ex-parte* decree in O.S.No.8330 of 2011 on 12.03.2012. Petitioner filed the suit against the respondents for the relief of specific performance of the contract on the basis of sale agreement dated 08.11.2006 for permanent injunction, declaration that settlement deed dated 23.08.2007 executed by first defendant in favour of the third defendant as null and void. It is claimed by the petitioner that he entered into a sale agreement with the first defendant on 08.11.2006 for the purchase of the suit property, for the sale consideration of Rs.9,50,000/-. A sum of Rs.9,50,000/- was paid as advance. Subsequently, first defendant executed power of attorney in favour of C.Francis. Since, there was a delay in executing the sale deed at the instance of the petitioner a fresh sale agreement dated 20.08.2007 was entered into



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between the petitioner and C.Francis. Petitioner was ready and willing to perform this part of the contract, but the defendants were not. On enquiry petitioner found that first defendant executed a settlement deed in favour of his son Kumar, third defendant. Third defendant in turn entered into a sale agreement with fourth defendant Kumaresan, therefore the suit. This suit was decreed *ex-parte* on 12.03.2012. Then the petitioner filed E.P.No.788 of 2016. He also filed E.A.No.1123 of 2017 for removal of obstruction by the obstructor Michael and the E.A.No.1123 of 2017 was allowed. Subsequently respondents 1 and 2 filed I.A.No.1 of 2019 for condoning the delay of 2462 days in filing the *ex-parte* decree set aside petition. This petition was contested by the petitioner. However, learned XVIII Additional Judge, City Civil Court, Chennai without considering the objection by the petitioner allowed the petition on payment of cost of Rs.7,500/-. Challenging this order, petitioner filed this Civil Revision Petition.

3.The learned counsel for the petitioner submitted that the delay in filing the *ex-parte* decree set aside petition is 2462 days. This



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delay was condoned without examining the witness and marking any document in support of the case of the respondents. Merely by perusing the typed set, learned XVIII Additional Judge, City Civil Court, Chennai has found that summons and notice were not served on the respondents in the suit and execution proceedings. Summons and notice were taken to the address given in the affidavit filed by the respondents i.e., plot No.995, Door No.39, Kennedy Street, G.K.M.Colony, Chennai. There is no details given as to how the respondents came to know about the *ex-parte* decree when there is allegation made with regard to fraud. This allegation should be proved by examining witnesses. That was not done in this case. Without examining the witnesses, production of documents with regard to the alleged non service of summons, condoning the delay of 2462 days in filing the *ex-parte* decree set aside petition is not correct and therefore the order of the learned XVIII Additional Judge, City Civil Court, Chennai has to be set aside.

4.In response, learned counsel for the respondents submitted that before filing the suit on the basis of sale agreement, no pre suit



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notice was sent. Even after obtaining the *ex-parte* decree, no notice was sent to the respondents to comply with the *ex-parte* decree. Only after going through the records and finding that summons were not served on the respondents the learned XVIII Additional Judge, City Civil Court, Chennai has condoned the delay in filing the petition to set aside the *ex-parte* decree. That order needs no interference and learned counsel for the respondents prayed for confirming the order of the learned XVIII Additional Judge, City Civil Court, Chennai and for dismissing this Civil Revision Petition.

5.Considered rival submissions and perused the records.

6.It is seen from the affidavit filed in support of the petition to condone the delay that first respondent/first defendant borrowed money from petitioner and third respondent. He borrowed a sum of Rs.9,50,000/- in 2006 and executed blank promissory note and the sale agreement. At the instance of the petitioner, he also executed a power of attorney in favour of the third respondent. He discharged the loan in



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2007 and requested them to return the papers obtained from him, as security. He settled the property in favour of his son second respondent Kumar on 23.08.2007. His brother Michael was permitted to stay in the room and he filed civil suit claiming himself as owner. Petitioner knew about the dispute between him and his brother. With the help of his brother, petitioner appeared to have made arrangements to return the summons sent to him and obtained *ex-parte* decree. A sale deed was also got executed in E.P.No.3454 of 2013. Notice was not served on the first respondent in the suit and in the execution petition. He came to know about the *ex-parte* decree only when rowdies entered his premises on 12.12.2018 for taking possession. He filed this petition within 30 days from the date of his knowledge of *ex-parte* decree.

7. These allegations of the first respondent are denied by the petitioner and he claims that, summons in the suit and notice in execution petition had been taken to the address given in the sale agreement and power of attorney deed. Even in the affidavit filed in I.A.No.1 of 2019, first respondent has given the same address. The claim



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of the first respondent that *ex-parte* decree were manoeuvred with the help of his brother is not correct.

8.The learned XVIII Additional Judge, City Civil Court, Chennai on considering the rival submissions found from the records that summons and notice were not served in the suit and in the execution petition and therefore, condoned the delay in filing the petition of setting aside *ex-parte* decree.

9.The main grievance of the learned counsel for the petitioner is that without examining the witness namely the first respondent to support his case of condoning the huge delay of 2486 days and without producing any document and without giving any opportunity to the petitioner to confront the case of the first respondent, the learned XVIII Additional Judge, City Civil Court, Chennai has simply set aside *ex-parte* decree on the basis of the records that summons and notice were not served.



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10.Considered rival submissions and perused the records.

11.It is seen from the sale agreement, general power of attorney deed, the plaint, the address of the first respondent, the settlement deed executed by the first respondent in favour of his son, the address of the first respondent is given as plot No.995, Door No.39, Kennedy Street, G.K.M.Colony, Chennai. Summons and notice were also taken to this address. Even in the affidavit filed in support of petition to condone the delay petition, first respondent has given the aforesaid address as his residential address even in 2019. Thus, there is no dispute that first respondent is residing in plot No.995, Door No.39, Kennedy Street, G.K.M.Colony, Chennai.

12.The learned XVIII Additional Judge, City Civil Court, Chennai found that summons were not served on the first respondent and notice was served only through the substituted service by publication. When there is allegation made with regard to the very



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service of summons, it is necessary for the first respondent to give evidence with regard to service or non service of summons in the suit and notice in the execution petition by producing relevant materials. If necessary by examining the first respondent and marking the relevant documents. The learned XVIII Additional Judge, City Civil Court, Chennai has condoned the huge delay of 2486 days in filing the petition to set aside the *ex-parte* decree. It is admitted position that in pursuance of the *ex-parte* decree delivery had been effected. Petitioner stand to gain in pursuance of the *ex-parte* decree. Petitioner has taken summons and notice to the first respondent's correct address. Then it is for the first respondent to prove that summons was not served on him and an *ex-parte* decree was obtained by the petitioner in connivance with his brother Michael. Only if the first respondent is examined the summons and notices taken to the defendants and returned unserved produced as exhibits, the Court would be in a position to find out who is at fault. Petitioner should also be given an opportunity to contest the claim of the first respondent with regard to the non service of summons and notice.



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13.In this view of the matter, the order of the the learned XVIII Additional Judge, City Civil Court, Chennai is set aside and this petition is remitted to the learned XVIII Additional Judge, City Civil Court, Chennai with a direction to examine the parties with regard to service or non service of summons in the suit and in the execution petition by giving opportunities to both the parties for producing relevant evidence and dispose the matter on merits and in accordance with law.

14.Accordingly, this Civil Revision Petition is allowed with aforesaid directions. Consequently, connected miscellaneous petition stands closed.

Ep

12.11.2021

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No



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To

1.The XVIII Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

Ep

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