

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**CRP (NPD) No. 602 of 2016 &
CRP (NPD) No. 510 of 2018**

and

**CMP No.3208 of 2016 &
CMP Nos.2618 & 2619 of 2018**

Senthamarai

...

Petitioner in both CRPs

Vs

Ramarao

...

Respondent in both CRPs

Prayer in CRP (NPD) No.602 of 2016:- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records of the Lower Court i.e. Principal Sub Judge, Puducherry and set aside the order and decreetal dated 03.08.2013 passed in I.A.No.958 of 2013 in O.S.No.322 of 2000 by the Principal Sub Judge, Puducherry and allow this Civil Revision Petition.

Prayer in CRP (NPD) No. 510 of 2018 :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 06.12.2017 passed in E.A.No.156 of 2017 in E.P.No.20 of 2006 by the Principal Sub Judge, Puducherry and allow this Civil Revision Petition.

For Petitioner : Mr.A.Kripakaran (in both CRPs)
For Respondent : Mr.S.Subramanian (in both CRPs)

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal dated 03.08.2013 passed in I.A.No.958 of 2013 in O.S.No.322 of 2000 and order dated 06.12.2017 passed in E.A.No.156 of 2017 in E.P.No.20 of 2006 on the file of the Principal Sub Judge, Puducherry, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for specific performance of the agreement of sale dated 02.02.1999. The total sale consideration is fixed at Rs.3,00,000/-. On the date of agreement, the petitioner received a sum of Rs.1,00,000/- as advance and agreed to execute the sale deed within a period of three months from the date of payment of the balance sale consideration.

3. According to the respondent, when the respondent was ready with the balance sale consideration, the petitioner did not come forward to receive the same and also refused to register the sale deed. Therefore, the respondent filed a suit for specific performance on 09.08.2000. After receipt of the summons, the petitioner failed to appear before the Court below and as such the petitioner was set exparte and exparte decree was passed on 27.10.2000.

4. On the strength of the exparte decree the respondent filed an Execution Petition in E.P.No.20 of 2006, in which, the petitioner was served notice. Only thereafter the petitioner came to know about the exparte decree passed in the suit for specific performance. Therefore, there is a delay of 2148 days in filing the petition to set aside the exparte decree.

5. On a perusal of the affidavit filed in support of the exparte decree reveals as follows :

“I submit that the respondent has filed the above suit for specific performance for the suit mentioned property. I

submit that in the above suit, the suit notice was not duly served on me and I was not aware of the case till recently and hence the exparte decree was passed as against me on 27.10.2000. I submit that my husband Santhakumar had picked up quarrel often with me due to the influence of liquor and he attacked me with weapons in the year 2000. On 26.08.2000 there was a family dispute arose between the husband and wife and he has attacked me and caused injuries and in order to save my life I was constrained to assault my husband with broken bottle and he sustained injuries on his ear. My husband has given a police complaint on 27.08.2000 to the SHO, Lawspet Police Station against me and my brother and a case was registered in F.I.R.No.75/2000 under Section 326 read with 34 of IPC. My husband left the wife and children on the street on 27.08.2000 itself and then he not permitted me to live with him along with the children. Infact, he deserted the wife and children and lived separately. I have lived along with children at my parents house at Siruvathur Village, Panruti Taluk, Cuddalore District. On 01.11.2000 I have filed a maintenance case as against my husband in M.C.No.31/2000 on the file of the Hon'ble Family Court

at Pondicherry and in that case a sum of Rs.1500/- was awarded on 11.01.2001 as monthly maintenance to me and my two children. I have filed the above M.C. from Siruvathur Village. My husband was not permitted me to live at Pethuchettipet and hence I was constrained to stay at my parents house at Siruvathur Village. When I was staying at Siruvathur Village, I have also filed a case for restitution of conjugal rights as against my husband in M.O.P.No.32/2001 on the file of Hon'ble Family Court Judge, Pondicherry on 23.03.2001. I was residing at Siruvathur Village till the year 2003 and then only I came to Pondicherry for Education purpose and stayed at No.17, School Street, Pethuchettipet, Lawspet, Pondicherry. I have no knowledge about the existence of O.S.No.322/2000 and the E.P.No.57/2001 which was filed by the decree holder for execution of sale deed by the court itself. I submit that in the above case an exparte decree was passed on 27.10.2000. I am having good case on merits and hence the exparte decree passed on 27.10.2000 may be set asided and permit me to contest the case on merits. I have also filed the petition to set-aside the exparte decree along with this petition."

6. Admittedly, there was a dispute between the petitioner and the respondent which was also converted into a criminal case. The petitioner was living in her parents house and also filed a Maintenance Case on the file of the Family Court, Pondicherry. Therefore, the petitioner was not residing in the address given in the plaint. Her husband also died on 06.11.2002. Thereafter, she came to the suit property and received notice in the Execution Petition.

7. That apart, the Court below set the petitioner as exparte and passed exparte decree and judgment on 27.10.2000. The Court below passed the Judgment as follows :

“2. The defendant was called absent and set exparte. Thereupon the plaintiff was examined as PW.1 and Exs. A1 to A4 were marked. Heard. Perused the records. Satisfied that the plaintiff's case stands proved. Hence suit is decreed with costs directing the defendant to execute the sale deed in respect of the suit property after receiving the balance sale consideration from the plaintiff and in default by the defendant directing the execution of the said sale deed by this Court or in the alternative direct

the defendant to return the advance amount of Rs.one lakh along with interest at 12% p.a. from the date of plaint till date of payment”.

8. In pursuant to the exparte Judgment and Decree, the respondent filed an Execution Petition in E.P.No.20 of 2006 and execution of sale deed was ordered. Accordingly, the sale deed was executed in favour of the respondent herein. Now, the Execution Petition is pending for delivery of possession. Pending the same, the petitioner also filed E.A.No.156 of 2017 under Section 47 of CPC, to set aside the decree and also took a specific ground that the decree is not executable one. The balance sale consideration is deposited by the respondent and it is lying with the Execution Court.

9) The learned counsel for the petitioner has relied upon the several reported judgments and its relevant paragraphs are extracted hereunder:-

(i) CMA No.3700 of 2010 of 2010 - Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd., the relevant paragraphs are extracted here

under:-

17. Section 2(2) of the Code of Civil Procedure defines a "decree" as follows:-

"2(2) "decree" means formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

In order to bring a decree within the provisions of

Section 2(2), the following essential elements are necessary. There must be a suit, as such a decree could be given only in relation to a suit. There must be an adjudication of the dispute. Adjudication means the judicial determination of the matter in dispute. Adjudication, in other words, also would mean that the Court must have applied its mind to the facts of the case to resolve the matter in dispute. Such adjudication must be about any or all the matters in controversy in the suit. After adjudication, there must be a conclusive determination of the rights of the parties. Finally, in order to pass a decree, the Court must formally express its decision in the manner provided by law. In this regard, the provisions of Section 33 of Code of Civil procedure are also relevant to be kept in mind. That provision states that the decree shall follow on the basis of the judgment pronounced. "

(ii)CRP(NPD) No.1619 of 2019-M.Chandra Vs.N.Boopathy, the relevant paragraphs are extracted here under:-

"10) In the light of the decisions cited Supra, ex-parte judgment passed by the Court below is not in consonance with Section 2(9) of C.P.C and therefore, it is clear that the judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9)

of C.P.C. The impugned order passed by the Court below in I.A.No.2369 of 2016 dismissing the application for condoning the delay of 292 days in filing the set aside petition is liable to be set aside."

(iii)CRP(MD) No.2003 of 2011-Vijayakumari and others Vs.Veeranan and others, the relevant paragraphs are extracted here under:-

"12)It is no doubt true that the delay of 1036 days is inordinate but this Court should also take note of the said ex-parte judgment, based on which execution petition has been filed and the sale deed was obtained by the plaintiff. Order XX Rule 4 CPC would clearly state that the judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. However, the judgment in the instant suit does not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. In a suit for specific performance, the Courts have to definitely consider the fact as to whether the plaintiff has been ready and willing to perform his part of the contract and the judgment in question does not spell out whether the issue has been considered. The issue regarding readiness and willingness to perform the obligation under the contract is a

sine qua non for a suit for specific performance."

(iv) **CRP (NPD)(MD).No.1303 of 2012-R.Stella Vs. V.Antony**

Francis and the relevant paragraphs are extracted here under:

"19)It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statment of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the ex-parte decree, this must also be taken into consideration. If the original judgment itself is ex-facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the ex-parte decree. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties."

(v) **CRP (PD) No.438 of 2018-Ramachandran and others Vs.Balakrishnan and others**, the relevant paragraphs are extracted here under:

"16. A Division Bench of this Court in *M/s.Meenakshisundaram Textiles v. M/s.Valliammal Textiles Ltd.*, reported in **2011 (3) LW 80**, has pointed out that even an *exparte* judgment must contain bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue. A judgment which does not contain the above would not qualify to be called a judgment. While considering the scope of the definition of the judgment under Section 2(9) of the Code of Civil Procedure read with Order 20 Rule 6(a), the Division Bench has held as follows:

"10. Judgment not containing the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to call as "judgment".

11. When the defendant is set *exparte*, the burden is heavy on the Court, as it would not have the advantage of defence. Therefore, the Court should be extra careful in such cases and they should consider the pleadings and evidence and should arrive at a finding as to whether the plaintiff has made out a case for a decree.

12. 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. The practice of writing a judgment indicating that the defendant was *exparte* and as such the claim was proved and the suit was decreed, deserves to be Condemned.”(Emphasis Supplied)

17. The appeal before the Division Bench was one against an order refusing to set aside an *exparte* decree filed under Order 43 Rule 1 (d) of the Code of Civil Procedure. The Division Bench went on to set aside the judgment and decree solely on the ground that it is not in conformity with the provisions of the Code of Civil Procedure. The Division Bench had also concluded that such judgments and decrees which show total non-application of mind on the part of the Trial Court will have to be set aside.

18. I therefore, have no hesitation to invoke the powers under Article 227 of the Constitution of India, to set aside the judgment and decree dated 17.07.2009 made in the suit viz., OS No.2 of 2008 on the file of the IIInd Additional Sub Court, Villupuram. The Civil Revision Petition is therefore allowed. Consequently, the connected miscellaneous petition is closed."

(vi) **CRP.(NPD).No.4324 of 201-Shanthimalai Trust Vs Arunachala Education and Environment and others**, the relevant paragraphs are extracted here under:

"32. The learned Subordinate Judge in his report has stated that counsels for either side have been taking time on the ground that the Writ Petition is pending in this Court. I am therefore of the considered opinion that this is a fit case where the powers of this Court under Article 227 of the Constitution of India, will have to be exercised to put the suit back on track, so that the rights of the contesting parties are determined at the earliest. No doubt the Hon'ble Supreme Court has pointed out that there is an alternative remedy available in a Civil Court under the Code of the Civil Procedure, the High Court shall not ordinarily exercise its powers under Article 227 of the Constitution of India.

34. *I do not think the observations of the Hon'ble Supreme Court extracted above would be taken to mean that there is a total bar on the exercise of jurisdiction under Article 227 by the High Courts in cases where a remedy is available under the Code of Civil Procedure. Even the Hon'ble Supreme Court has only said that the availability of a remedy under the provisions of the Code of Civil Procedure may have to be construed as a near total bar. The Hon'ble Supreme Court has not totally debarred the High Courts from exercising their power under Article 227 in appropriate cases, if the High Court feels that the Trial Court has failed in its duty. I find that the Trial Court in the case on hand has not only passed a wholly illegal exparte decree, but it has shirked its responsibility in disposing of the applications for condonation of delay in seeking to set aside the exparte decree within a reasonable time by merely adjourning the proceedings without showing any sense of responsibility.*

35. *For all the foregoing reasons, I have no hesitation in setting aside the exparte decree dated 28.04.2009, in exercise of my power under Article 227 of the Constitution of India. The very fact that the exparte decree came to be*

passed within 30 days of the institution of the suit is by itself a reason to set aside the exparte decree."

10. The Hon'ble Division Bench and the learned single judge of this Court in a number of cases had set aside the exparte judgment and decree solely on the ground that it is not in conformity with the provisions of the Code of Civil Procedure.

11. The judgment, which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". Further the practice of writing a judgment indicating that the defendant called absent and set as ex-parte and as such the claim was proved and the suit was decreed, deserves to be condemned and it should not be followed by the trial Court.

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12. The above judgment is not satisfactory and unreasoned judgement passed by the Court below is cryptic and it is ex-facie illegal. The Court below while considering the petition to condone delay in set aside the ex-parte decree, must also take this into consideration. It is also relied upon in the judgment reported in **2019 7 SCC 359** in the case of **Robin Thopa Vs Rohit Dora** and the relevant paragraph is extracted hereunder:-

8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

13. The Order XX Rule 4 CPC would clearly state that the judgement of the Court shall contain a concise statement of the case, the points for determination, the decision there on and the reasons for such decision. Therefore, the above judgment passed by the Court below does not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. The judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9) of CPC.

14. Insofar as the delay is concerned that the suit is filed for declaration and as such the trial Court considered the delay petition in a liberal manner and it has to be decided on merits. The petitioner categorically stated that she was living in her parents house and was not residing in the address given in the plaint. Her husband also died on 06.11.2002. Thereafter, she came to the suit property and received notice in the Execution Petition. Therefore, she could not appear before the trial Court. Further, the length of delay is no matter and sufficiency of the explanation is the relevant criteria. This Court finds that the ex-parte judgment passed by the trial Court is not in consonance with Order 20 Rule 4(ii) of CPC. Therefore, this Court has no hesitation to invoke the powers under Article 227 of the Constitution of India to set aside the ex-parte judgement and decree dated 27.10.2000 passed by the Principal Sub Judge, Puducherry.

15. In view of the above, CRP (NPD) No. 602 of 2016 is allowed, on condition that the petitioner shall deposit the advance amount of a sum of Rs.1,00,000/- with interest at the rate of 12% p.a till today namely

Rs.3,52,000/- in the suit account, within a period of two weeks from the date of receipt of a copy of this order, failing which the order shall automatically cancelled. On such deposit, the exparte decree dated 27.10.2000 is set aside and the sale deed dated 10.03.2004 registered vide Document No.1862 of 2004 is set aside. Thereafter, the Trial Court is directed to dispose of the suit, within a period of three months.

16. In view of the order passed in CRP (NPD) No.602 of 2016, no adjudication is required in CRP (NPD) No.510 of 2018, which is accordingly closed. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

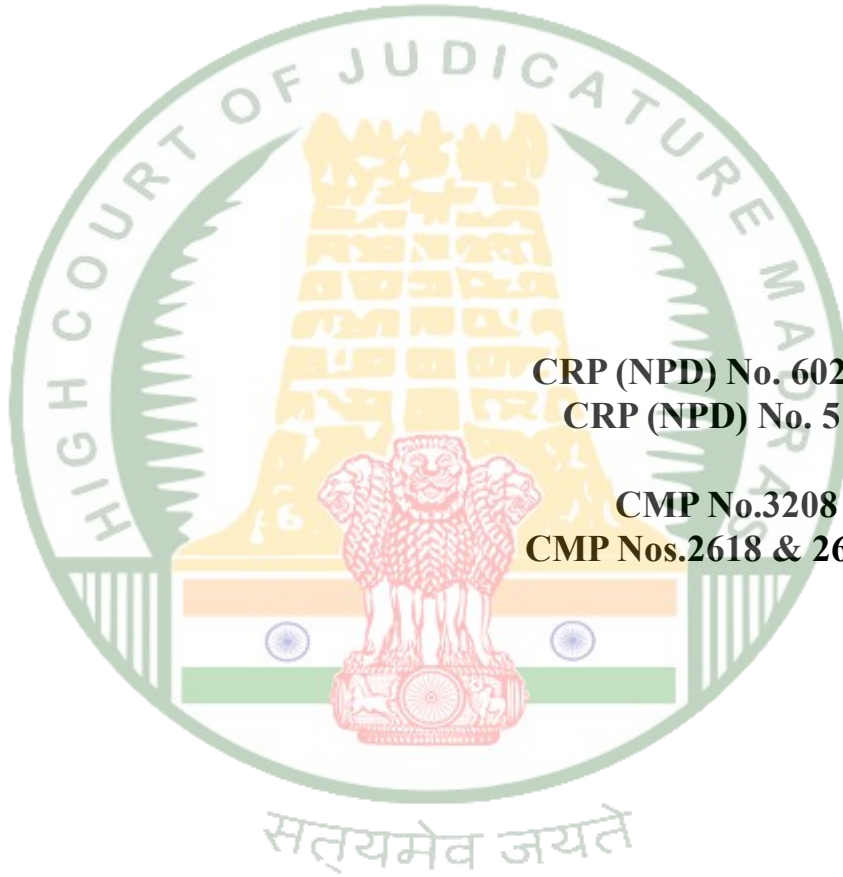
The Principal Sub Judge,
Puducherry

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C.R.P.(N.P.D) No.602 of 2016 &
C.R.P.(N.P.D) No. 510 of 2018

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