

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP (PD) No.4741 of 2014
and
MP.No.1 of 2014

G.Vidhya,
W/o.R.Vijayaraman

... Petitioner

Vs.

1.Belfort Sagayamarie Adeline,
D/o.Belford Aroquiasamy

2.Cedric Armand Ragouramin,
S/o.Subrayan

3.Jacqueline Inayatoulla,
W/o.Inayatoulla Chanbacha

4.Inayatoulla Chanbacha,
S/o.C.Inayatoulla

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to prefer this memorandum of grounds of Civil Revision Petition against the Order and Decreetal order dated 24.11.2014 made in I.A.No.662 of 2014 in O.S.No.6 of 2009, on the file of the learned III Additional District Judge, Puducherry.

For Petitioner : Mr.T.P.Manoharan

For R1 : Mr.B.Gandhi

For R2 to R4 : No appearance

ORDER

(This case has been heard through video conference)

The Civil Revision Petition has been filed by the petitioner / 4th defendant seeking to set aside the order dated 24.11.2014 in I.A. No. 662 of 2014 in O.S. No. 6 of 2009 passed by the learned III Additional District Judge, Puducherry dismissing the petition to set aside the exparte order dated 03.11.2014.

2.The brief facts of the case is that the plaintiff had filed O.S. No. 6 of 2009 before the learned III Additional District Judge, Puducherry against the defendants. The suit had been filed by the plaintiff seeking for preliminary decree of partition and final decree of demarcation, allotment and delivery of separate possession of his half share in the suit property and for costs. The revision petitioner / 4th defendant is the purchaser of the suit property from the

1st to 3rd defendants and she is the contesting defendant. The suit was posted on 03.11.2014 for filing of written statement. Since the counsel for the 4th defendant had not appeared and filed written statement on 03.11.2014, the 4th defendant was set exparte. Aggrieved by the same, she had filed I.A. No. 662 of 2014 stating that on 03.11.2014, there was heavy rain in Pondicherry and thereby, her counsel was unable to reach the Trial Court. Since, the counsel did not appear before the Trial Court and file the written statement, the Court had set her exparte. It was further stated that the non-filing of the written statement was neither willful nor wanton and it was not done deliberately with an intention to protract the trial and that the written statement had been filed immediately within two days along with an application in I.A. No. 662 of 2014 under Order IX Rule 7 of the Code of Civil Procedure seeking to set aside the exparte order dated 03.11.2014 and permission was also sought to contest the suit on merits.

3.The learned counsel appearing for the plaintiff before the Trial Court has filed a counter on behalf of the plaintiff. In the counter, it had been stated that I.A. No. 662 of 2014 is the second application filed to set aside the exparte order. It had been further stated that the 4th defendant was earlier set exparte on 24.06.2009 and thereafter, the trial was conducted and when the suit was

posted for judgment on 24.01.2013, the 4th defendant had filed I.A. No. 17 of 2013 after three years to set aside that exparte order and the Court had set aside that exparte order. It was further averred that the 4th defendant had not shown sufficient cause for setting aside the exparte order dated 03.11.2014. Further, it had been averred that the written statement was not filed in time and it was barred by limitation under Article 137 of the Limitation Act, 1963, and thereby, sought to dismiss the petition seeking to set aside the exparte order. The Trial Court by order dated 24.11.2014 dismissed I.A. No. 662 of 2014 filed by the 4th defendant stating that it is the second application for setting aside the exparte order and that on an earlier occasion on 24.06.2009, she was set exparte and only when the suit was posted for judgment, an application in I.A. No. 17 of 2013 was filed by her after 3 years seeking to set aside the exparte order dated 24.09.2009 and that on application has been allowed on 15.02.2013. Further, the plaintiff had also filed I.A.No. 200 of 2013 in I.A. No. 17 of 2013 seeking to set aside the order dated 15.02.2013 and that was dismissed by order dated 09.10.2014 and even till that time, the 4th defendant had not filed the written statement. Thereafter, since the 4th defendant did not appear on 03.11.2014 and that the case was defended by the other defendants and further finding that the application was devoid of merits, dismissed I.A. No. 662 of 2014 in O.S. No. 6 of 2009 by order dated 24.04.2014. Against

which, the present Civil Revision Petition has been filed.

4.The learned counsel appearing for the 4th defendant would submit that a perusal of the order of the Trial Court would show that the Trial Court has taken into consideration the past conduct of the 4th defendant in the suit instead of finding whether the petitioner has shown sufficient cause or not for her non-appearance before the Trial Court on 03.11.2014. Admittedly, on 03.11.2014, there was heavy rain in Pondicherry and thereby, the counsel was unable to reach the Court. However, the trial Court without giving an opportunity or posting the matter to the next day had set the 4th defendant *exparte*. However, within two days, the 4th defendant filed an application under Order IX Rule 13 of the Code of Civil Procedure to set aside the *exparte* order along with the copy of the written statement. He would further submit that under Order IX Rule 13 of the Code of Civil Procedure, an *exparte* order passed against the defendant can be set aside on the satisfaction of the Court that the applicant is able to show sufficient cause for non appearance before the Court on a particular day. Further, the failure to appear on 03.11.2014 was neither willful nor wanton and it was not done deliberately with an intention to protract or prolong the trial. He would further submit that the 4th defendant is the purchaser of the property for a valuable consideration having interest in the

property and the suit is filed for a substantive relief of partition. He would further submit that the other respondents, having sold the property and having received the consideration from the 4th defendant, do not have any interest to contest the suit and the 4th respondent has to contest the suit. The learned counsel would further reiterate that the Trial Court ought not to have considered the past events and the Trial Court ought to have only considered whether the 4th defendant had shown sufficient cause for non appearance on the particular day and the intention of the 4th defendant. The learned Trial Judge failed to note that the petition to set aside the exparte order has been filed within two days. In support of his contention, the learned counsel for the 4th defendant would rely on the Judgment of the Hon'ble Apex Court in ***A.Murugesan v. Jamuna Rani*** reported in ***(2019) 20 SCC 803***. He would further submit that the 4th defendant is a lady who had purchased the property for valid consideration and if the order is not set aside and if the 4th defendant is not permitted to contest the suit, she will be put to grave prejudice. He would further submit that the Civil Revision Petition may be allowed on terms and costs.

5. In reply, the learned counsel appearing for the plaintiff would submit that the suit is of the year 2009. The 4th defendant was earlier set exparte and

thereafter, on an application filed by her, the exparte order was set aside. Even thereafter, the 4th defendant had not filed the written statement and thereby, the Trial Court rightly finding that the 4th defendant was delaying the trial had passed the exparte order. He would further submit that the only intention of the 4th defendant is to delay the trial and that the written statement has not been filed till date.

6.At this juncture, the learned counsel for the 4th defendant would submit that the written statement was filed along with the application to set aside the exparte order. A copy of the written statement is also enclosed in the typed set and that the 4th defendant stands by the written statement. He would further submit that the copy of the written statement has also been furnished to the learned counsel for the plaintiff along with the typed set.

7.Heard the counsels and perused the materials placed on record.

8.The suit in O.S. No. 6 of 2009 has been filed by the plaintiff seeking for a partition of the suit property by metes and bounds. The 4th defendant is the purchaser of the property and a person interested in the suit property. The 4th defendant had earlier been set exparte and subsequently, the exparte order

had been set aside. Thereafter, the case had been listed on 03.11.2014 for filing of written statement. It is the case of the 4th defendant that on account of heavy rains at Pondicherry on 03.11.2014, her counsel was unable to reach the Trial Court and file the written statement and thereby, the Court had set her exparte. However, within two days, I.A. No. 662 of 2014 had been filed seeking to set aside the exparte order. The application had been filed along with written statement. The reason for non-filing of the written statement on 03.11.2014 had been stated in the affidavit filed in support of the application. The 4th defendant had shown sufficient cause for non appearance before the Court on 03.11.2014 and immediately, within two days, the application to set aside the exparte order has been filed. The suit is only for substantive relief and the 4th defendant being the interested person in the property has to defend the suit. The Trial Court has taken into consideration the past conduct of the 4th defendant in the suit instead of finding whether the 4th defendant has shown sufficient cause or not for non appearance before the Trial Court and not filing the written statement on 03.11.2014. It is well settled by various decisions of the Hon'ble Apex Court that when an application is filed for setting aside the exparte order under Order IX Rule 13 of the Code of Civil Procedure, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called. The Trial Court

without recording specific finding on the plea of the 4th defendant that there was sufficient cause for non appearance on 03.11.2014 had committed error in referring to the past conduct and dismissing the application.

9. At this juncture, this Court, deems it apposite to refer to the Judgment of the Hon'ble Apex Court in **A.Murugesan vs. Jamuna Rani** reported in **(2019) 20 SCC 803**, which reads as follows:-

"10. From a perusal of the order of the trial court, it is clear that the trial court has taken into consideration the past conduct of the appellant-defendant in the suit, instead of confining the consideration as to whether the appellant has shown sufficient cause or not for not appearing in the matter on 16-3-2009. It is fairly well settled that when an application is filed for setting aside ex parte decree under Order 9 Rule 13 CPC, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called. Without recording the specific finding, on the plea of the appellant that there was sufficient cause, the trial court has committed error in rejecting the application under Order 9 Rule 13 CPC. Even the appellate and the Revisional Court have not considered the matter in proper perspective and rejected the claim of the appellant. The judgment in G.P. Srivastava [G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54] supports the case of the appellant. In the aforesaid

judgment, the very issue had fallen for consideration before this Court. The relevant Para 7 reads as under: (SCC p. 57)

“7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any “sufficient cause” from appearing when the suit was called on for hearing. Unless “sufficient cause” is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words “was prevented by any sufficient cause from appearing” must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard-and-fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The “sufficient cause” for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If “sufficient cause” is made out for non-appearance of the defendant on the date fixed for hearing

when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

11. The aforesaid view taken by this Court in the judgment referred to above supports the case of the appellant. It is further brought to our notice that on the aforesaid date i.e. 16-3-2009, on which date the suit was listed for trial, in view of the boycott of the courts by the advocates, all other cases were adjourned and only this case was proceeded and ex parte decree was passed.

12. As the suit is for a substantive relief i.e. for grant of decree of specific performance, and further we are satisfied that the appellant has shown sufficient cause for not appearing in the matter when the matter was called on 16-3-2009, we are of the view that it is a fit case to allow the application filed by the appellant, by setting aside the impugned orders. All the courts below committed error in

rejecting the application on the grounds which are not relevant to consider the application filed under Order 9 Rule 13 CPC.

13. We are conscious of the fact that all the three courts have held against the appellant, but if we allow the impugned orders to stand, it will result in miscarriage of justice. For the aforesaid reasons, the impugned orders are set aside, consequently IA No. 117 of 2009 filed in OS No. 92 of 1997 on the file of Sub-Judge, Chidambaram, stands allowed.

14. As the suit is of the year 1997, we direct the trial court to dispose of the same as expeditiously as possible preferably within a period of six months from today. Both the parties shall cooperate for proceeding with the trial and for expeditious disposal in the suit. It is also made clear that we have not expressed any opinion on the merits of the matter. It is open for the trial court to decide the issues for consideration independently, uninfluenced by any of the observations made in the impugned order [A. Murugesan v. Jamunarani, 2014 SCC OnLine Mad 12984] or the order passed by this Court."

10.This Court is of the opinion that it is a fit case to allow the revision petition by setting aside the impugned order dated 24.11.2014 in I.A. No. 662 of 2014 passed by the learned III Additional District Judge, Puducherry.

11.In view of the above, the Civil Revision Petition is allowed. The impugned order dated 24.11.2014 in I.A.No.662 of 2014 in O.S.No.6 of 2009 passed by the learned III Additional District Judge, Puducherry is hereby set aside and I.A.No.662 of 2014 in O.S.No.6 of 2009 stands allowed on the following terms and conditions:-

- i. The 4th defendant shall pay a cost of Rs.10,000/- [Rupees Ten Thousand Only] to the plaintiff or his counsel within a period of four weeks from the date of receipt of a copy of the order.
- ii. the 4th defendant shall file an affidavit of undertaking before the trial Court that she will co-operate for the expeditious disposal of the trial and she will cross examine the witnesses on the side of the plaintiff on the same day of their examination in chief or on the next hearing date fixed by the Court.
- iii. the trial Court shall take up the case for hearing on 18.06.2021 and see to that the trial is completed within a period of six months from that date.

A.D.JAGADISH CHANDIRA,J.,

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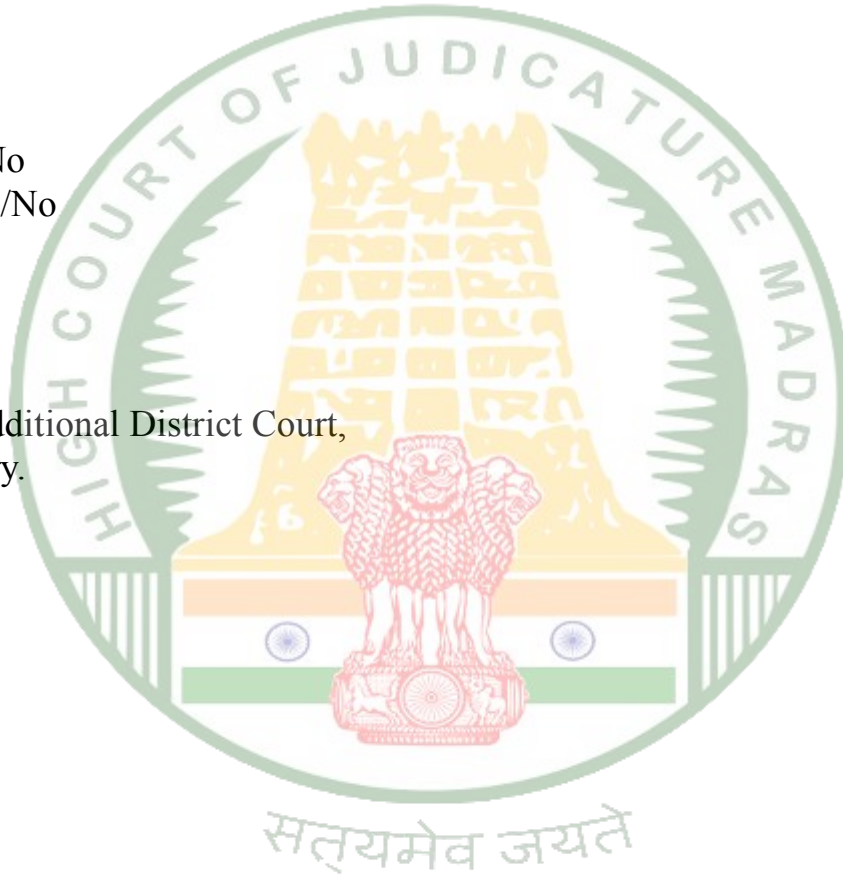
12.With the above directions, the Civil Revision Petition stands allowed with costs. Consequently, the connected miscellaneous petition stands closed.

16.04.2021

Index:Yes/No
Internet:Yes/No
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To

1.The III Additional District Court,
Puducherry.



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