

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2120 of 2017
and C.M.P.No.10125 of 2017

1.V.Vathan Chettiar

2.V.Manikandan

... Petitioners

Vs.

C.Ramasamy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.03.2017 made in I.A.No.415 of 2016 in O.S.No.653 of 2010 on the file of III Additional District and Sessions Court, Coimbatore.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.L.Poovendra Perumal

for Mr.T.Sai Krishnan

ORDER

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

Civil Revision Petition is filed against the fair and decretal order dated 22.03.2017 made in I.A.No.415 of 2016 in O.S.No.653 of 2010 on the file of III Additional District and Sessions Court, Coimbatore.

2.The petitioners are defendants and respondent is plaintiff in O.S.No.653 of 2010 on the file of III Additional District and Sessions Court, Coimbatore. The respondent filed the said suit for specific performance of agreement of sale or alternate relief of return of amount of Rs.10,71,000/- and cost. The petitioners have entered appearance in the suit through their counsel, but did not file written statement. An exparte decree was passed against the 1st petitioner on 31.08.2012 to refund the amount to the respondent. The petitioners filed I.A.No.415 of 2016 to condone the delay of 1200 days in filing the petition to set aside the exparte decree dated 31.08.2012.

3. According to the petitioners, the 1st petitioner is aged 81 years, he is suffering from various ailments including neurological problem and was taking treatment in various hospitals as mentioned in the affidavit. In view of the same, written statement could not be filed in time and also could not meet his Advocate at Coimbatore to give instruction to file the present petition.

4. The respondent filed counter affidavit and stated that the intention of the petitioners is only to drag on the proceedings. Earlier on 08.02.2011, an exparte decree was passed. By two separate interim applications viz., I.A.No.1834 of 2011 filed by the 1st petitioner and I.A.No.1836 of 2011 filed by the 2nd petitioner, the said exparte decree was set aside on 10.12.2011. Even after the said orders, the petitioners did not file written statement and again exparte decree was passed on 31.08.2012. The present petition was filed only in the year 2016. The respondent has further stated that exparte decree was passed only against the 1st petitioner directing him to refund the amount paid by the

respondent. The 1st petitioner settled his property worth of Rs.80,00,000/- on the 2nd petitioner, who is his son, in order to defeat the decree obtained by the respondent. The reasons given by the petitioners are not valid and prayed for dismissal of the said I.A.

5.The learned Judge considering the materials placed before him, the reasons given by the petitioners and nature of decree passed against the 1st petitioner, allowed the I.A. on condition that the petitioners deposit a sum of Rs.3,92,785.50 (comprising of cost of Rs.1,67,785.50 as per the decree dated 31.08.2012 apart from 25% of the decretal amount i.e., Rs.2,25,000/-).

6.Against the said fair and decretal order dated 22.03.2017 made in I.A.No.415 of 2016 in O.S.No.653 of 2010, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners contended that the order of the learned Judge directing the petitioners to deposit the

amount as a pre-condition to condone the delay is contrary to law and erroneous. The learned Judge having accepted the reasons given by the petitioners, ought to have allowed the I.A. without any condition. The learned Judge failed to see that the 1st petitioner is 81 years old and he is managing his family with his meagre pension amount. The learned Judge failed to see that the respondent did not pay the requisite Court fee, when the plaint was presented and only after four extensions, the respondent paid deficit Court fee. The order of the learned Judge directing the petitioners to deposit the amount as condition to allow I.A. deprives the petitioners of a fair contest in the suit and prayed for allowing the Civil Revision Petition.

8.The learned counsel appearing for the respondent contended that the respondent filed E.P.No.6 of 2014 to execute the decree. Only with an intention to delay the execution of the decree, the petitioners have come out with the present Civil Revision Petition. Earlier in the year 2011, the petitioners were set exparte and on filing two applications, exparte decree

was set aside. Even after the said orders, the petitioners did not file any written statement and contest the matter. In view of the same, they were set exparte and exparte decree was passed again in the year 2012. The petitioners have not given any reason for condoning the delay. The learned Judge erroneously allowed the I.A. The petitioners are not entitled for any relief and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the materials on record.

10. From the materials available on record, it is seen that in the suit filed by the respondent, the petitioners were set exparte and earlier exparte decree was passed on 08.02.2011. On two different applications filed by the petitioners, by order dated 10.12.2011, the said exparte decree was set aside. Even after eight months of the said orders, the petitioner did not file written statement and contest the suit on merits. Again the petitioners were set exparte and exparte decree was passed

granting alternate claim of the respondent directing the 1st petitioner to refund the amount paid by the respondent. The petitioners did not file any petition immediately. Only in the year 2016, the petitioners have filed present I.A. to condone the delay of 1200 days stating that due to ill health of the 1st petitioner and his treatment in various hospitals, they could not contact the Advocate to file the written statement and present petition. The learned Judge considering the reason given by the petitioners, in order to give an opportunity to the petitioners, allowed the I.A. on condition to deposit a sum of Rs.3,92,785.50 (comprising of cost of Rs.1,67,785.50 as per the decree dated 31.08.2012 apart from 25% of the decretal amount i.e., Rs.2,25,000/-). The learned counsel for the petitioners submitted that due to old age of the 1st petitioner, they are not able to mobilise the amount and deposit the amount. As per the order of this Court dated 30.06.2017 in C.M.P.No.10125 of 2017 in C.R.P.No.2120 of 2017, the petitioners have deposited a sum of Rs.50,000/-, which was imposed as a condition for granting stay.

11.Considering the above materials in its entirety, the petitioners

are directed to deposit another sum of Rs.2,00,000/- in addition to Rs.50,000/- already deposited by them, instead of Rs.3,92,000/- as per the order of the learned Judge, within a period of four weeks from the date of receipt of a copy of this order, failing which, the order passed in I.A.No.415 of 2016 in O.S.No.653 of 2010 condoning the delay shall stand dismissed.

12.The learned counsel appearing for the petitioners as well as the respondent submitted that the petitioners have filed written statement and hence, a direction may be issued to the trial Court for speedy disposal of the suit. In view of the above, since the suit is of the year 2010, the learned Judge is directed to consider the petition filed by the petitioners to set aside the exparte decree within a period of two weeks from the date of deposit of the amount and dispose of the suit as expeditiously as possible in any event, not later than six months.

13.With the above directions, the Civil Revision Petition stands

disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

16.09.2021

Index : Yes/No

Internet: Yes/No

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To

III Additional District and Sessions Judge
Coimbatore.

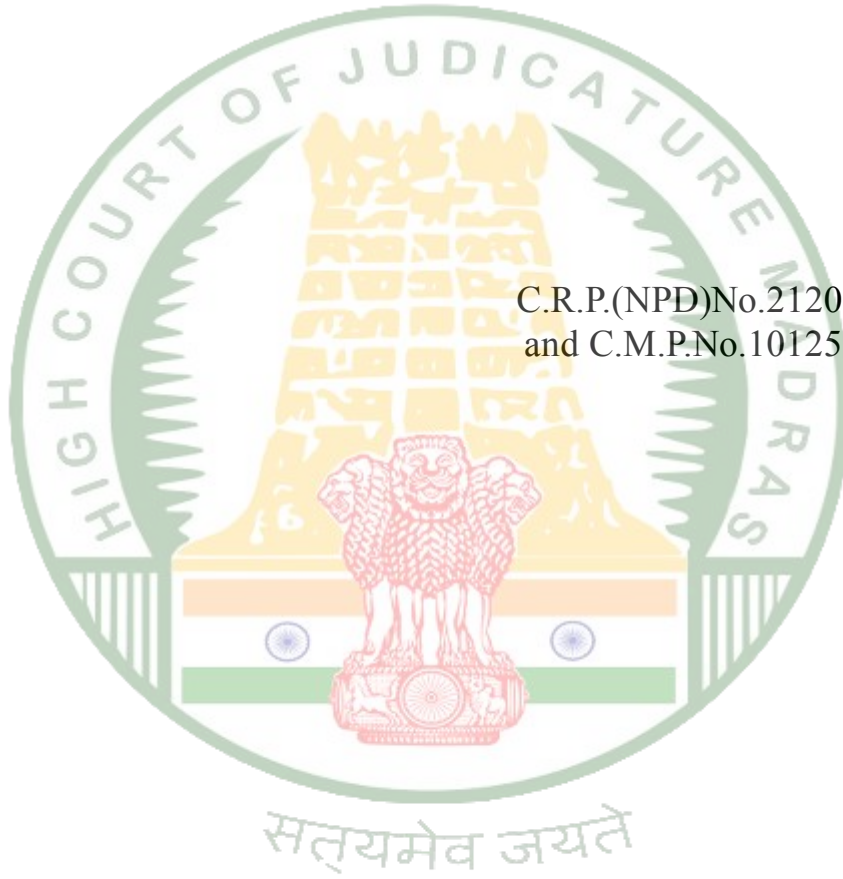


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C.R.P.(NPD)No.2120 of 2017

V.M.VELUMANI,J.

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and C.M.P.No.10125 of 2017

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