

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3207 of 2017

and

C.M.P.No.14983 of 2017

Shahbid Ali Shah Masjid Makkan,
Rep. by its Hereditary Muthavalli
Syed Aslam Basha,
S/o. Syed Peer Basha,
No.34 A, Periya Hasanapura Arcot,
Vellore District.

.. Petitioner

Vs.

1.M.Dhamodran

G.Kurna Moorthy (died)

2.K.Jayanthi

3.K.Pradep

4.K.Divya

.. Respondents

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Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C. against the fair and decretal order dated 15.06.2017 made in I.A.No.128 of 2010 in O.S.No.195 of 1998 on the file of the Sub Court, Vellore.

For Petitioner : Mr.P.Mani

For Respondents : No appearance

ORDER

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

This Civil Revision Petition is filed against the fair and decretal order dated 15.06.2017 made in I.A.No.128 of 2010 in O.S.No.195 of 1998 on the file of the Sub Court, Vellore.

2.The petitioner is plaintiff and the respondents are defendants in O.S.No.195 of 1998. The petitioner filed the said suit for permanent injunction restraining the respondents and their men, agents and servants not to interfere with the petitioner's peaceful possession and enjoyment of property. The respondents did not file written statement and was set exparte on 10.09.1998 and inspite of being called, the respondents did not appear and hence, exparte decree was passed on 07.03.2001. The respondents filed I.A.No.128 of 2010 to condone the delay of 3250 days in filing the petition to set aside the exparte decree dated 07.03.2001. According to the respondents, they have engaged one Mr.Ashok Kumar, Advocate to defend the suit and to conduct the case. The said counsel did not inform the respondents about the

stage of the suit. Only when the petitioner took steps for name transfer, the respondents met the advocate and he informed that they were set exparte for not filing the written statement. Then they engaged the present counsel and filed petition to condone the delay of 3250 days in filing the petition to set aside the exparte decree and prayed for condoning the delay. In the said I.A.No.128 of 2010, the petitioner filed counter affidavit and submitted that respondents filed suit in O.S.No.84 of 2002 on the file of the District Munsif Court, Arcot against the petitioner. In the said suit, the petitioner filed counter affidavit in the I.A. filed in the said suit and stated about the present exparte decree in the year 2002 itself. Hence, they are well aware of the exparte decree in the year 2002 itself. The reason now given by the respondents is only to drag on the proceedings and prayed for dismissal of I.A.No.128 of 2010 in O.S.No.195 of 1998.

3.The learned Judge considering the averments made in the affidavit and counter affidavit, held that though the respondents have not proved the reason for delay by letting in oral and documentary evidence, to avoid multiplicity of proceedings and in order to give opportunity to the respondents to contest the suit on merits, allowed the I.A. on payment of cost

of Rs.10,000/- (Rupees Ten Thousand Only).

4. Against the said fair and decretal order dated 15.06.2017 made in I.A.No.128 of 2010, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner contended that the learned Judge erred in allowing the I.A. after holding that the respondents have not proved the reason given for the delay by letting in oral and documentary evidence. The learned Judge failed to consider the counter affidavit filed by the petitioner in the present I.A. In the year 2002 itself the petitioner has stated in the counter affidavit filed in the suit in O.S.No.84 of 2002 on the file of the District Munsif Court, Arcot, filed by the respondents about the exparte decree dated 07.03.2001 passed in the present suit that the respondents were set exparte on 10.09.1998 and only on 07.03.2001, exparte decree was passed. The findings of the learned Judge that if the petition is not allowed, there is a possibility of multiplicity of proceedings and no prejudice will be caused to the petitioner are erroneous. The learned counsel appearing for the petitioner further contended that as per the order of the Court, the

respondents have deposited a sum of Rs.10,000/- (Rupees Ten Thousand Only) ordered as cost by the Court. The petitioner has not received the said amount and prayed for allowing the Civil Revision Petition.

6.Though the respondents entered appearance through the counsel, there was no representation for the respondents on 24.08.2021. To give one more opportunity to the respondents, this Civil Revision Petition was directed to be posted today. Even today also, there is no representation for the respondents.

7.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

8.From the materials available on record, it is seen that the petitioner filed the present suit in the year 1998 for permanent injunction restraining the respondents and their men not to interfere with the petitioner's peaceful possession and enjoyment of the property. The respondents were set exparte on 10.09.1998 and exparte decree was passed against them only on 07.03.2001. According to the petitioner, the respondents filed O.S.No.84 of

2002 on the file of the District Munsif Court, Arcot, against the petitioner. The petitioner filed counter affidavit in the said suit and stated about the exparte decree dated 07.03.2001 passed in the present suit and the respondents were also aware of the exparte decree in the year 2002 itself. According to the petitioner, in spite of the said information, the respondents did not take any further proceedings challenging the exparte decree dated 07.03.2001.

9.From the materials available on record, it is seen that the respondents have stated that earlier they have engaged one Mr.Ashok Kumar, Advocate to conduct the case and he did not inform the respondents about the stage of the case. It is for the litigant to contact their Advocate with regard to suit proceedings and stage of the suit. The respondents were called absent and set exparte on 10.09.1998 and exparte decree was passed only on 07.03.2001. The respondents have not given any reason for not contacting their Advocate for 12 years till 2010. The present I.A. is filed only in the year 2010. The respondents were not vigilant enough to contest the suit even though they filed the suit against the petitioner in O.S.No.84 of 2002 in the year 2002 itself before the District Munsif Court, Arcot. The learned Judge failed to consider

the averments made in the counter affidavit filed by the petitioner in the present I.A. The learned Judge after holding that the respondents have not proved the reason given for the delay by letting in oral and documentary evidence, erroneously allowed the I.A. on payment of cost of Rs.10,000/- (Rupees Ten Thousand Only). The attitude of the litigant blaming his earlier Advocate after filing change of vakalat is deprecated by this Court in number of cases. The learned Judge has not properly appreciated the materials and exercised his jurisdiction properly. The impugned order of the learned Judge suffers from error warranting interference by this Court. In view of the above, the impugned order of the learned Judge is liable to be set aside and is hereby set aside.

10. In the result, this Civil Revision Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

31.08.2021

krk
Index : Yes / No
Internet : Yes / No

To
The Subordinate Judge,
Vellore.

V.M.VELUMANI, J.
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