

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) No.3835 of 2019

R. Raghupathi Petitioner

Vs.

1. S. Selvam
2. Santhakumar
3. The Sub-Registrar Respondents

Prayer: This Civil Revision Petition filed under Section 115 of CPC seeking for to set aside the docket order dated 23.04.2015 made in I.A. No.42 of 2015 in O.S. No.105 of 2011 on the file of the Hon'ble III Additional District Court, Thiruvallur, Poonamallee.

For Petitioner	... M/s.Girija Velmurugan
For Respondents 1 & 2	... Mr. B. Balachander
For Respondent 3	... Mr. T.M. Pappiah
	(For Special Govt. Pleader)

ORDER

This Civil Revision Petition under Section 115 of CPC seeking for to set aside the docket order dated 23.04.2015 made in I.A. No.42 of 2015 in O.S. No.105 of 2011 on the file of the Hon'ble III Additional District Court, Thiruvallur, Poonamallee.

2. The case of the petitioner is that the plaintiff who is the 1st respondent herein has filed a suit for specific performance in O.S. No.105 of 2011 on the file of the III Additional District Judge, Poonamallee, (originally the suit was instituted before the District Judge, at Thiruvallur and subsequently it has been transferred to the III Additional District Judge, at Poonamallee), against the defendants 1 and 2 who are the petitioner and the 2nd respondent herein, seeking for a relief to perform the sale agreement entered into between the plaintiff and defendants 1 & 2 dated 19.07.2010 and permanent injunction restraining the defendants 1 & 2. Even though the suit was adjourned for several times, the D1 was called absent and failed to file Written statement and hence the suit was posted for ex-parte evidence on 17.10.2010. After several adjournments, ex-parte decree was passed on

03.08.2013. Being aggrieved, the 1st defendant/petitioner herein has filed I.A. No.42 of 2015 under Order 9 Rule 13 of C.P.C. on the file of the III Additional District Judge, at Poonamallee. The Court below having considered the dismissal order dated 23.04.2015 in I.A. No.41 of 2015 filed under Section 5 of Limitation Act r/w. 151 C.P.C., has dismissed the I.A. No.42 of 2016 by Docket order dated 23.04.2015. Being aggrieved, the 1st defendant/petitioner herein has filed the present Civil Revision petition to set aside the same.

3. The learned counsel for the petitioner submitted that the Court below has dismissed the I.A. No.42 of 2015 which has been filed under Order 9 Rule 13 C.P.C. to set aside the ex-parte order dated 03.08.2013 passed by the Trial Court on the ground that the condone delay petition in I.A. No.41 of 2015 filed under Section 5 of Limitation Act r/w. 151 of C.P.C was dismissed by the Court below on the ground of failure in producing of medical records to support the contention on the side of the petitioner herein. As against the dismissal order in I.A. No.41 of 2015 dated 23.04.2015, the petitioner had preferred C.R.P. No.2719 of 2015 before this Court to set aside the aforesaid order. The same was allowed

by order dated 05.12.2018 on production of medical records and on condition to pay a sum of Rs.10,000/- to the respondent. The same was also complied with by the petitioner herein. Without considering the above, the Court below has dismissed the I.A. No.42 of 2015 and hence it is liable to be set aside.

4. The learned counsel for the respondents would submit that this Court by order dated 05.12.2018 allowed the C.R.P. (NPD) No.2719 of 2015 by setting aside the order dated 23.04.2015 of the Court below made in I.A. No.41 of 2015, hence, there is no objection to allow this petition.

5. Heard, the learned counsel appearing for both sides as well as perused the material available on record.

6. On perusal of the record, it is seen that the petitioner has filed both applications in I.A. No.41 of 2015 under Section 5 of Limitation Act r/w. 151 of C.P.C seeking for to condone the delay of 515 days in filing the petition and I.A.No.42 of 2015 filed Order 9 Rule 13 C.P.C. to set aside the Ex-parte order dated 03.08.2013 passed by the Trial Court.

The Court below dismissed the I.A. No.41 of 2015 by order dated 23.04.2015 since the medical evidence was not produced by the petitioner. At the same time, I.A. No.42 of 2015 was also dismissed having considered the aforesaid dismissal order. As such, the petitioner has filed CRP (NPD) No.2719 of 2015 before this Court against the order dated 23.04.2015 made in I.A. No.41 of 2015. This Court by order dated 05.12.2018 allowed the same on costs of Rs.10,000/- payable to the respondent by setting aside the dismissal order dated 23.04.2015 in I.A. No.41 of 2015 in O.S.No.105 of 2011. However, as I.A. No.42 of 2015 has not been set aside by this Court, the Trial Court has closed the notes paper. Hence, the petitioner has filed the present Civil Revision petition to set aside the I.A. No.42 of 2015.

7. Having considered the aforesaid facts and circumstances of the case, this Court already allowed C.R.P. (NPD) No.2719 of 2015 by order dated 05.12.2015 on condition by setting aside the order dated 23.04.2015 in I.A. No.41 of 2015 passed by the Court below and the petitioner herein has complied with the conditional order of this Court. Further, the learned counsel for the respondents have not raised any

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serious objection against the contention of the petitioner. At this stage, In the interest of justice, the Civil Revision petition is to be considered without prejudice to the respondent/plaintiff and thereby the order dated 23.04.2015 in I.A. No.42 of 2015 in O.S. No.105 of 2011 is hereby set aside. The Trial Court is directed to dispose of the suit in O.S. No.105 of 2011 as expeditiously as possible since the case is pending from the year 2011.

8. In the result, the Civil Revision petition stands allowed on payment of Rs.500/- to the respondent herein. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

सत्यमेव जयते

15.03.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To: The III Additional District Court,
Thiruvallur, Poonamallee.