

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (PD).No.3071 of 2018

and

C.M.P.No.17774 of 2018

P.Manoharan

... Petitioner

Vs.

1. Sathyanarayanan

2. Baskaran

3. Lalitha

4. Selvakumar

5. Anbazhagan

6. Karunanidhi

7. Vijayalakshmi

8. Premkumar @ Srinivasan

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to revise the order and decretal order passed in I.A.No.248 of 2017 in O.S.No.117 of 2006 dated 02.07.2018 pending on the file of the Principal District Munsif, Kancheepuram.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.S.D.S.Philip (for R-1)
: Ex-parte (for R-2 to R-8)

O R D E R

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.248 of 2017 in O.S.No.117 of 2006 dated 02.07.2018 on the file of the Principal District Munsif, Kancheepuram, thereby dismissing the petition to condone the delay of 3751 days in filing the petition to set aside the ex-parte decree.

2. The petitioner is the third defendant and the first respondent is the plaintiff. The first respondent filed the suit for partition in O.S.No.117 of 2006 as against the petitioner and other respondents herein. On receipt of summons, the petitioner and other respondents failed to appear before the Trial Court and as such, they were set ex-parte and the ex-parte decree was passed on 26.06.2006. Therefore, the petitioner filed a petition to set aside the ex-parte decree with a delay of 3751 days in filing the application to set aside the ex-parte decree, which was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the suit was filed by the first respondent for partition. The Court below issued summons and the Bailiff reported to the Trial Court that on 15.06.2006 he went to the petitioner and other defendants house and they have read the summons and reported that they were no way connected to the present suit and refused to receive the same. If the defendants refused to receive the same, the Bailiff ought to have affix the suit summons in the Door steps, as contemplated under Order V Rules 17 and 19 of the Civil Procedure Code. Therefore, there is categorically error committed by the Court below with regard to serving the summons. Without even proper service of summons, all the defendants were set ex-parte and an ex-parte decree was passed by the Lower Court. Insofar as the length of delay is concerned, when the Court below erred in serving the summons, the length of delay does not matter to consider the petition to condone the delay. He further submit that the Court below failed to consider that this Court reported in 2016 (6) CTC 209 (**Satbir Singh Bakshi -vs- Saroja**) has held as follows:-

"That there is no limitation for filing set aside the ex-parte order even failure to adduce specific reason for

non appearance for non filing of written statement is not fatal - Court can condone absence of party to advance cause of justice – Application can be entertained before pronouncement of judgment – Participation of defendants in Trial proceedings cannot be denied even if he does not show any good cause.

4. The learned counsel for the petitioner also submitted that the Court below failed to consider that reported in 2015 (1) CTC 811 (**Ajay Kumar Gulecha -vs- J.Vijaykumar**) the Court while set aside the ex-parte decree the delay of 1753 days has held as follows:-

“No doubt, delay is huge right over valuable property is involved the rights of the party should be decided on merits – Interest of Justice requires an opportunity be given to respondent”.

5. He further submitted that the Court below failed to consider that in the case of (**Sarasu -vs- Ravi**) reported in 2016 (5) CTC 117, this Court condone delay of 1317 days set aside the ex-parte decree and it has held as follows -

"Applications for condoning delay filed under Section 5 to be dealt with liberally and leniently in order to do substantial justice to parties – Length of delay not a material factor for deciding Applications under Section 5 – Allowing an Application under Section 5 only to permit a party to participate in main proceedings whether issue between parties would be decided on merits – However, if meritorious matter is thrown out on account of technical issue, cause of justice would be defeated".

6. Per contra, the learned counsel appearing for the first respondent submitted that the first respondent filed the suit for partition in the year 2006. When the Bailiff went to the premises, all the defendants were alive, but they wantonly refused to receive the same. Therefore, the Court below rightly set them ex-parte and passed the ex-parte decree. In fact, after the ex-parte decree, the first respondent filed a petition in I.A.No.613 of 2013 for passing final decree. In the said final decree application, the petitioner was duly served notice on 29.01.2014. Even then, the petitioner herein did not take any steps to set aside the ex-parte decree. He further submitted that already the first defendant filed a petition to set aside the ex-parte decree

with a delay of 2626 days in I.A.No.119 of 2014 and the same was dismissed and confirmed by this Court in C.R.P.No.43 of 2016 by an order dated 08.01.2016. Therefore, the petitioner prayed for dismissal of this Civil Revision Petition.

7. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the first respondent.

8. The petitioner is the third defendant and the first respondent is the plaintiff. The first respondent filed the suit for partition and while serving the summons, the petitioner and other defendants refused to receive the summons after reading the summons. The only point raised by the petitioner is that the Court below violated the procedures contemplated under Order V Rules 17 and 19 of the Civil Procedure Code. The said provisions contemplated that when the defendants refused to receive or refused to sign the acknowledgement, the serving officer shall affix the copy of summons on the outer door or some other conspicuous part of the house, in which the defendants ordinarily resides. Whereas, in the case on hand, after reading

the summons, all the defendants refused to receive the summons. Therefore, they know the content of the summons and also they stated that they were in no way connected to the present suit. Therefore, there is no violation of the procedure as contemplated under Order V Rules 17 and 19 of the Civil Procedure Code.

9. That apart, the first respondent filed a petition for final decree application in I.A.No.613 of 2013. In the said final decree application, the petitioner was duly served notice on 29.01.2014 itself. Whereas, the petitioner filed a petition to set aside the ex-parte decree only in the year 2017 and absolutely there is no explanation for the said delay and after coming to know about the preliminary decree, the petitioner did not take steps to set aside the final decree. In fact, the first defendant in the suit also filed a petition to set aside the ex-parte decree in I.A.No.119 of 2014 with the delay of 2626 days in filing the application to set aside the preliminary decree and the Court below dismissed the same by an order dated 03.09.2015 and the same was also confirmed by this Court in C.R.P.No.43 of 2016 by the order dated 08.01.2016. Therefore, the above judgments

relied upon by the learned counsel for the petitioner are not helpful to the case on hand. Hence, this Court finds no infirmity or illegality in the order passed by the Court below.

10. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.07.2021

Speaking/Non-speaking order

Index : Yes/No

kv

To

1. The II Additional Principal Judge, Tirupur.
2. The Section Officer,
V.R. Section, High Court of Madras.

सत्यमेव जयते

WEB COPY

G.K.ILANTHIRAIYAN,J.

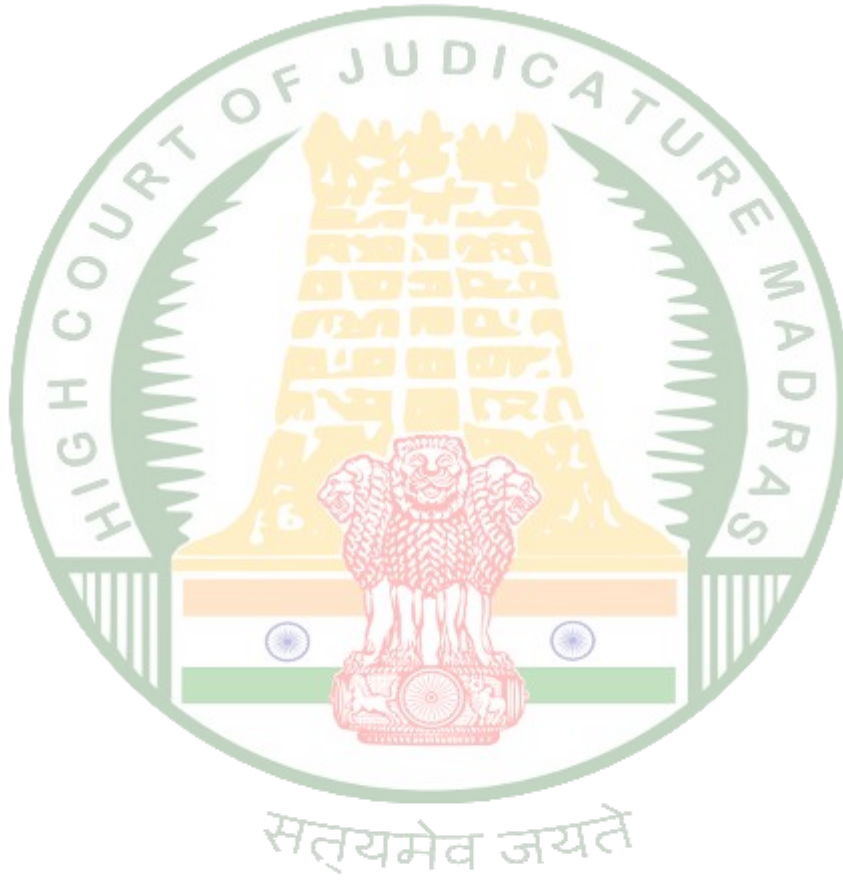
Kv



C.R.P (PD).No.3071 of 2018

WEB COPY

07.07.2021



WEB COPY