

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.(PD) No.3239 of 2018
and CMP No. 18438 of 2018**

K.Kumar

....

Petitioner

Vs

A.Krishnan

....

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 13.06.2018 made in I.A.No.462 of 2016 in O.S.No.75 of 2007 on the file of the Subordinate Judge, Kallakurichi.

For Petitioner : Mr.R.Bharth Kumar

For Respondent : Mr.V.Gunasekar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 13.06.2018 made in I.A.No.462 of 2016 in O.S.No.75 of 2007 on the file of the Subordinate Judge, Kallakurichi, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The revision petitioner is the second defendant and the respondent is the plaintiff. The respondent filed a suit in O.S.No.75 of 2007 for declaration and permanent injunction in respect of the suit property. There are two defendants in the suit.

3. The case of the petitioner is that a part of the first item of the 'B' schedule property was purchased by the petitioner from the first defendant by a registered sale deed dated 26.07.2005 vide document No.1056 of 2005. While being so, the respondent filed a suit in respect of the property purchased by the second defendant/petitioner as well as other properties for declaration and permanent injunction. Further, the case of the petitioner is that the respondent/plaintiff and the first defendant are brothers. The respondent and the first defendant in the suit had jointly purchased the property to an extent of 2.78 cent. Thereafter, they partitioned the same and 1.39 cents was allotted to the respondent herein and another share was allotted to the first defendant. The eastern side of the portion was allotted to the respondent herein and the western side of the portion was allotted to the first defendant. The first defendant and his son divided the property into two shares and 0.70

cents was allotted to the first defendant and another 0.70 cents was allotted to his son. In turn, the first defendant sold out his share ad-measuring 0.70 cent in favour of the petitioner herein.

4. Suppressing these facts, the respondent simply filed a suit for declaration and permanent injunction in respect of all the properties, that too, without adding the son of the first defendant as one of the defendant. However, the first defendant had undertaken to look after the case on behalf of the petitioner also. Therefore, the petitioner went to Kerala for his avocation for fishing and stayed there to look after his avocation. The first defendant also engaged a counsel and filed a written statement. Though, the summons served to the petitioner as well as the first defendant, the first defendant engaged a counsel and thereafter failed to appear before the Court below, therefore, he was set ex-parte and subsequently, an ex-parte order was passed on 06.10.2012. On 02.06.2008, the first defendant filed his written statement and thereafter he failed to cross-examine P.W.1. As far the petitioner is concerned, he was set ex-parte and ex-parte decree was passed on 06.10.2012. The petitioner filed a petition to condone the delay of 1155 days in filing the petition to set aside the ex-parte decree.

5. On perusal of the affidavit filed in support of the condone delay petition revealed that the petitioner went to Kerala for his livelihood, since, he is a fisherman. Due to his avocation, he stayed at Kerala. He also trusted the first defendant who assured him that he will look after the case on behalf of the petitioner. When the complaint was lodged by the respondent to vacate the premises, which was purchased by the petitioner, he came to know about the ex-parte decree. Immediately, he approached the counsel and filed a petition with a delay of 1155 days in filing the petition to set aside the ex-parte decree.

6. A perusal of the Judgment dated 06.10.2012 shown that the Court below, without even framing any issues, simply allowed the suit as prayed for. The said portion of the Judgment is extracted here under :

“ Perused the proof affidavit of plaintiff and Ex.A1 to A4. P.W.1 has deposed in the proof affidavit, all the facts stated in the plaint. Evidence of P.W.1 in chief examination remains unchallenged, since the defendants are set ex-parte. Ex.A1 is the registered sale deed dated 07.02.2006, executed by first defendant in favour of the plaintiff. Ex.A2 are kist receipts in the name of plaintiff. Ex.A3 is the certified copy of the sale deed ated 26.07.2005, in favour of second

defendant by the first defendant. Ex.A4 is the certified xerox copy of sale deed dated 06.10.1997, executed in favour of plaintiff and first defendant. From the Ex.A1 to A4 and the uncontraverted evidence of P.W.1 the plaintiffs claim is proved. Plaintiff's suit in O.S.No.75 of 2007 for declaration and permanent injunction in respect of the suit A and B Schedule properties is decreed. Further, the sale deed dated 26.07.2005 executed in favour of second defendant in document No.1056 of 2005, in respect of the suit 'B' Schedule 1st item property is cancelled. Plaintiff is entitled for suit cost."

7. Admittedly, the first defendant filed his written statement on 02.06.2008. Even then, the Court below without framing any issues and without stating any reasons, mechanically allowed the suit as prayed for. Therefore, the Judgment itself is not a Judgment in the eye of law, since, it is not contemplated under Order 20 Rule 5 of CPC.

8. In this regard, the relevant portion of the Judgment reported in **2021 (3) CTC 387** in the case of **Brahmand Farm Lands Ltd. Vs. K. Venkatesan**, is extracted hereunder :

"8. Admittedly the Trial Court neither framed any issues and nor considered the same. The Trial Court has only rendered its findings. Therefore, the Judgment itself is not on the line of provision

under Order 20, Rule 5 of C.P.C. It is relevant to rely upon the Judgment in the case of Meenakshisundaram Textiles, rep. by its Managing Director v. Valliammal Textiles Ltd., 2011 (3) CTC 168, as follows:

"5. We have heard the respective learned Counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a "Judgment" as meaning, the statement given by the Judge on the grounds of a Decree or Order. In this context, Order 20, Rule 4(1) & (2) are also referable, which read as under:

"4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts: Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

Order 20 Rule 4(1) relates to the Judgment of a Court of Small Causes. Inasmuch as the said Judgment does not require more than the points for determination and that the decision thereon, a Judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the Judgment of other Court is concerned, in terms of Order 20, Rule 4(2), it shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and therefore, it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the ingredients contained in Order 20, Rule 4(2) must be available in that Judgment. This is more so in view of the provisions of Order 20, Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:

"5. Court to state its decision on each issue.--In Suits in which issues have been framed, the Court shall state its finding, or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the Suit."

6. In terms of the above provisions, every Judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A Judgment, which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "Judgment". The Judgment should contain the brief summary of the facts, the evidence produced by the Plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the Suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a Decree in case the Defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a Court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a Judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

21. From the above discussions, it is manifestly clear that even a Judgment rendered ex parte and a Decree is drawn on the basis of that Judgment, it is appealable. In case that Judgment and Decree become final without there being any Appeal, the Decree is executable. In that sense, there is no difference between a Judgment and Decree and an ex

parte Judgment and Decree. In view of the above, in the event the Defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the Plaintiff has made out a case for a Decree. In this context, it may also be mentioned that though a detailed Judgment is required in a contested matter, an ex parte Judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such Judgment."

9. The Hon'ble Division Bench of this Court manifestly clear that even a Judgment rendered ex parte and a Decree is drawn on the basis of that Judgment, it become final and it is executable. In the event the Defendants were set ex parte, the Court should be extra careful and should consider the pleadings, evidence and arrive at a finding as to whether the Plaintiff has made put the case for a Decree. The ex parte Judgment should show the application of minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such Judgment. The above case is squarely applicable to the case on hand. In view of the above, the ex parte Judgment passed by the Trial Court is not on the line of provisions of Order 20, Rule 4(1) & (2) of C.P.C.

10. Insofar as the delay is concerned, it is relevant to rely upon the Judgment in the case of *Ummer v. Pottengal Subida and others*, 2018 (1) MWN (Civil) 638 (SC): 2018 (15) SCC 127, as follows:

"17. In the light of the aforementioned undisputed facts, in our opinion, the High Court should have taken liberal view in the matter and held the cause shown by the Appellant as "sufficient cause"

within the meaning of Section 5 of the Limitation Act and accordingly should have condoned the delay in filing the Appeal.

18. One cannot now dispute the legal proposition that the earlier view of this Court that the Appellant was required to explain the delay of each day till the date of filing the Appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law."

Accordingly, the cause shown by the parties are sufficient cause within the meaning of Section 5 of the Limitation Act and accordingly, should have condoned the delay in filing the Petition. Further held that the parties required to explain the delay of each day as no longer good law. In the case on hand, the Petitioner stated the reasons that due to the Advocates' boycott, he could not be able to file his Written Statement in the Suit. Further he has got good case to defend the Suit:

11. Insofar as the ex parte Decree is concerned in the Suit for Specific Performance the litigation not to be terminated by default and the adjudication to be done as far as possible. In this regard, the learned Senior Counsel appearing for the Petitioner relied upon the Judgment in the case of Robin Thapa v. Rohit Dora, 2019 (6) CTC 344 (SC): 2019 (2) MWN (Civil) 673 (SC): 2019 (7) SCC 359, in which the Hon'ble Supreme Court of India held as follows:

"8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the Plaintiff or the Defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

.....

13. The matter arises from a Suit for Specific Performance. It may be true that there is a case for the Respondent that the Appellant has actually let out the building on rent. The Appellant's case is that this is the Appellant's Residential house and the matter is a Loan

transaction. Specific relief is undoubtedly a discretionary relief. Appellant has submitted that the Appellant is prepared to deposit the entire amount spent by the Respondent towards getting Sale Deed executed. We would think that the interest of justice demands that subject to putting the Appellant on terms, an opportunity should be given to the Appellant to contest the case and the case must be directed to be disposed of within the time limit."

In the case on hand, the Respondent filed Suit for Specific Performance and the Petitioner was set ex parte. As stated supra, the Judgment itself is not a Judgment in the eye of law."

8. In view of the above, the order dated 13.06.2018 made in I.A.No.462 of 2016 in O.S.No.75 of 2007 on the file of the Subordinate Judge, Kallakurichi, is hereby set aside and the Civil Revision Petition is allowed on cost. The petitioner shall pay a sum of Rs.25,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which the order passed by this Court shall stand automatically cancelled. On such payment, the Trial Court is directed to restore the Suit and dispose of the same on merits and in accordance with law, within a period of three months, thereafter.

Consequently, connected Miscellaneous Petition is closed. No costs.

20.07.2021

Lpp
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The Subordinate Judge,
Kallakurichi.



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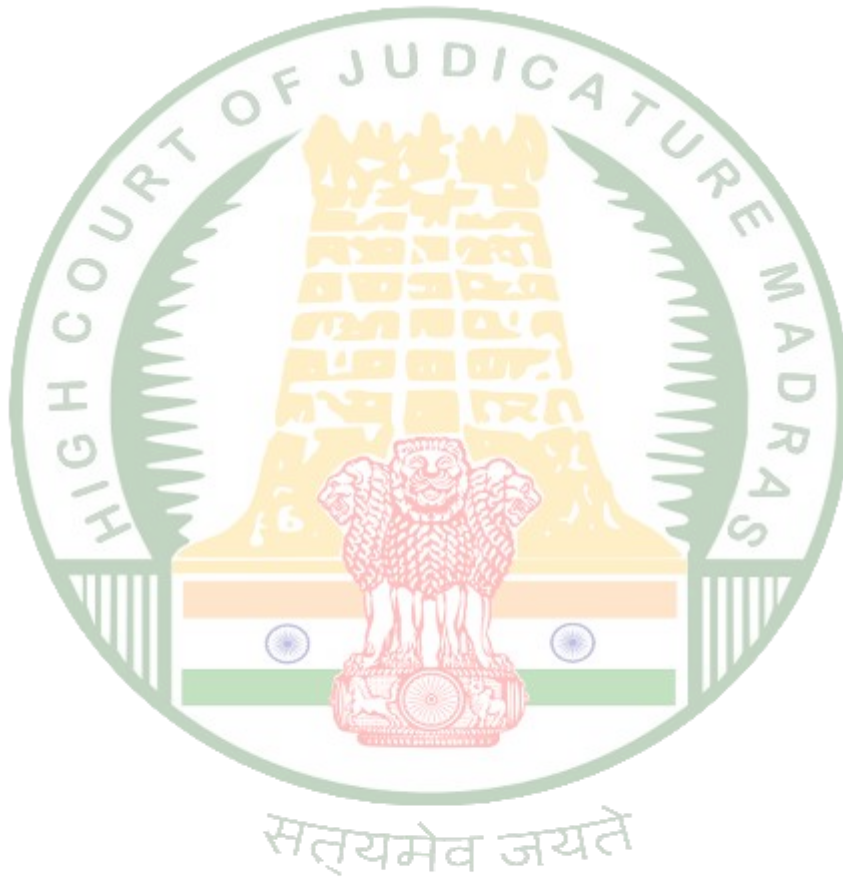
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