

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP (PD) No.3753 of 2018

and

CMP.No.20933 of 2018

1. V.Kannammal

2. Subhuashini

3. Tharini

4. Nandini

[Petitioners 2 to 4 are represented by power agent
V.Kannammal]

... Petitioners

Vs.

Gopu Sridhar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.08.2018 made in I.A.No.183 of 2018 in O.S.No.447 of 2011 on the file of I Additional Subordinate Court, Coimbatore.

For Petitioners : Mr.P.R.Ramakrishnan for
: M/s.Sarvabhauman Associates

For Respondent : Mr.R.Babu for
: Mr.B.Kumarasamy

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.183 of 2018 in O.S.No.447 of 2011 dated 20.08.2018 on the file of the learned I Additional Subordinate Judge, Coimbatore, thereby, allowing the petition to set aside the ex-parte order.

2. The petitioners are the plaintiffs and the respondent is the 5th defendant. The petitioners filed a suit for declaration and permanent injunction in respect of the suit property. While pending the suit, the respondent herein purchased the part of the suit property. Therefore, he filed a petition in I.A.No.1143 of 2013 to implead him as 5th defendant in the suit. Thereafter, he failed to file his written statement and as such, he was set ex-parte on 05.07.2016. After a period of two years from the date of ex-parte order, he filed a petition to set aside the ex-parte order by stating the reason that on 05.07.2016, he suffered from Viral Fever, he had taken treatment, as such, he could not able to appear before the trial Court and could not able to follow his advocate in the suit proceedings. Though, the Court below recorded all facts, finally it allowed the application with costs

of Rs.2,500/-.

3. Mr.P.R.Ramakrishnan, learned Senior Counsel for the petitioners submitted that the respondent was impleaded as 5th defendant in the suit as early as on 29.07.2013. Originally, the suit was filed in the year 2007 and subsequently, it was transferred to the First Additional Sub Court, Coimbatore and re-numbered as O.S.No.447 of 2011. After his impleament, he was given so many opportunities to file his written statement. Even then, he failed to file his written statement and when the suit was posted on 05.07.2016 either his counsel nor the respondent was present and as such, he was set ex-parte. He further pointed out that in the affidavit, he has specifically stated that he was suffering from Viral Fever only on 05.07.2016 and thereafter, he could not able to meet his counsel and could not able to file his written statement. Even after the treatment, he did not take any steps to file the petition immediately and also did not take any steps to file his written statement. Only on 13.02.2018, he filed the present application to set aside the ex-parte order, which shows that he has filed the petition only to drag on the proceedings. When the respondent wantonly and wilfully without filing the written statement allowed him to set ex-parte,

he is not entitled to get the ex-parte order set aside. In support of his contentions, he relied upon the judgment reported in (2007) 6 SCC 420 (*R.N.Jadi & Brothers -vs- Subhashchandra*).

4. Per contra, the learned counsel appearing for the respondent submitted that after allowing the petition to set aside the ex-parte order, he duly complied with the condition imposed by the Court below and paid a sum of Rs.2,500/- as costs to the petitioners. He was absent on 05.07.2016 only for the reason that he was suffering from Viral Fever and as such, he could not able to meet his counsel and could not able to file his written statement. Admittedly, he is the purchaser of the suit property pendente lite and as such, he has to defend the suit and he may be given one more opportunity.

5. Heard the learned Senior counsel for the petitioners as well as the learned counsel appearing for the respondent.

6. The respondent was impleaded as 5th defendant in the suit filed by the petitioners for declaration and permanent injunction on 29.07.2013. Since the respondent purchased the suit property from the first defendant pendente lite. Thereafter, till 05.7.2016, he failed to file his written

statement.

7. On a perusal of the affidavit filed in support of the petition to set aside the ex-parte order, it reveals that the respondent was suffering from Viral Fever on 05.07.2016 and as such, he could not able to appear before the Court below, could not follow up his counsel in the suit proceedings and could not be able to file his written statement. Even assuming that he was suffering from Viral Fever on 05.07.2016, he kept quite till 13.02.2018, without filing any petition to set aside the ex-parte order and also did not take any steps to file his written statement. Only on 13.02.2018, he filed the present application to set aside the ex-parte order by stating the above said reasons. It is nothing but delaying the process and it amounts to clear abuse of process of Court. He also failed to examine any of the witness and failed to mark any documents to prove his stand as stated in the affidavit.

8. In this regard, the learned Senior Counsel for the petitioners relied upon the judgment reported in (2007) 6 SCC 420 (***R.N.Jadi & Brothers -vs- Subhashchandra***), wherein it is held as follows:-

“15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the Court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred McAlpine & Sons (1968) 2 QB 229 : (1968) 2 WLR 366 : (1968) 1 All ER 543 (CA) that law's delays

have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?”

9. Therefore, the trial Court ought not to have allowed the petition to set aside the ex-parte order, that too filed after nearly two years from the date of the ex-parte order. The respondent was given several opportunities to file his written statement from 29.07.2013 onwards. Even then, he did not file his written statement for 3 years and only on 05.07.2016, he was set ex-parte. That apart, the suit was of the year 2007 and subsequently, it was transferred to file of the First Additional Sub Court, Coimbatore in the year 2011 and re-numbered as O.S.No.447 of 2011. Therefore, the order passed by the Court is perverse and illegal and it is liable to be set aside.

10. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.183 of 2018 in O.S.No.447 of 2011 dated 20.08.2018 is set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.04.2021

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To

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1. The I Additional Subordinate Judge, Coimbatore.
2. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

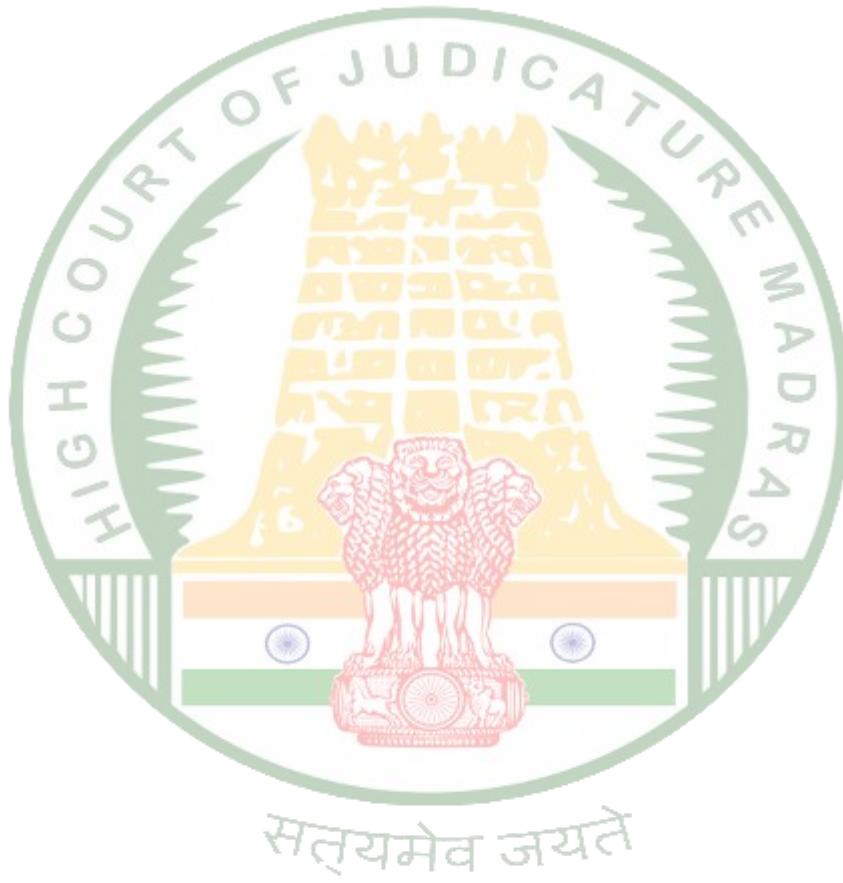
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