

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM:

THE HON'BLE MR.JUSTICE KRISHNANRAMASAMY

C.R.P.(NPD) No.3545 of 2018

Jayalakshmi Petitioner

-VS-

Saravanakumar ... Respondent

PRAYER: This Revision Petition is filed under Section 115 of CPC, against the order dated 29.08.2018 made in R.E.A.No.8/2017 in R.E.A.No.68/2012 in R.E.P No.4/2008 in O.S.No.223 of 2006 dated 29.08.2018 on the file of the Principal District Munsif Judge, Tiruchengode.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.V.S.Kesavan

J U D G M E N T

This present Civil Revision Petition has been filed against the order passed by the Court below in R.E.A.No.8/2017 in R.E.A.No.68/2012 in

R.E.P No.4/2008 in O.S.No.223 of 2006 dated 29.08.2018 on the file of the Principal District Munsif Judge, Tiruchengode.

2.The petitioner herein is the judgment debtor and the respondent herein is the auction purchaser. The respondent has filed R.E.A.No.11 of 2011 before the Court below seeking direction to the petitioner herein to deliver the vacate possession of the property purchased by him in the auction sale. While so, the petitioner herein has moved the application in R.E.A.No.68 of 2012 under Section 47 r/w 151 of CPC, praying to set aside the auction sale. In the said application, the respondent herein has been arrayed as the second respondent and subsequently he was set *ex parte* on 19.01.2017, since there was no appearance on behalf of the respondent herein, later, when he came to know that he was set *ex parte* order the respondent herein has moved application in R.E.A.No.8 of 2017, praying to set aside the *ex parte* order passed against him on 19.01.2017. Resisting this application, the petitioner herein has filed counter affidavit by order dated 29.08.2018 in R.E.A.No.8 of 2017 the Court below has allowed the application, setting aside the *ex parte* order passed against the respondent herein. Aggrieved by the same the petitioner has before this Court.

3.The main contention of the learned counsel for the petitioner is that the Court below has passed an impugned order by taking into consideration of the Doctor Certificate as well as the Train Ticket dated 15.12.2017 produced on behalf of the respondent herein. However, it is pertinent to note that these documents have not been marked in the manner known to law. The learned counsel for the petitioner would also contended that the respondent has moved the application for seeking to set aside *ex parte* order under Order 9 Rule 7 r/w 151 of CPC which is incorrect provision of law, the respondent ought to have file the application under Order 21 Rule 106 of CPC. However, the Court below has erroneously entertained the application and allowed the same. Therefore, the order passed by this Court below is liable to be set aside.

4.The learned counsel appearing for the respondent submits that the documents viz. Doctor Certificate and Train Ticket were not marked, however, the Court below has rightly considered the same and convinced with the reasons mentioned by the respondent for his non-appearance and rightly set aside the *ex parte* order passed against the respondent. As regards, the correct provision of law under which the application seeking to set aside the *ex parte* order has to be filed is concerned, though it has been

wrongly filed under Order 9 Rule 7 r/w 151 of CPC, the Court has jurisdiction and competent to rectify and alter the provision of law and can pass order in the interest of justice when the Court is satisfied with the bonafides of the petitioner. Therefore, the learned counsel for the respondent would submit that the Court below has rightly considered the case of the respondent and set aside the *ex parte* order and therefore there is no irregularity or illegality in the order to interfere with the same and hence he prays for dismissal of the Civil Revision Petition.

5. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

6. Taking note of the fact that the respondent had not appeared before the Court below, it appears that the *ex parte* order came to be passed by the Court below against the respondent herein, in R.E.A.No.68 of 2012 on 19.01.2017. Immediately after coming to know about the *ex parte* order, the respondent has filed application seeking to set aside the *ex parte* order along with the application, the respondent filed Doctor Certificate and Train Ticket to prove that he was taking treatment from 03.01.2017 to 21.01.2017 and thereby he could not appear before the Court below on the date of

passing the *ex parte* order dated 19.01.2017. The learned counsel for the petitioner would contended that the Doctor Certificate and Train Ticket were bogus documents and the same were concocted for the purpose of filing the application to set aside the *ex parte* order and therefore the same cannot be relied on. Since, it is the specific case of the respondent that he was undergoing treatment from 03.01.2017 to 21.01.2017 and he also produced the Doctor Certificate to that effect to prove the same and after treatment he travelled to reach his place and to prove the same he filed Train Ticket. Considering the same, the Court below was convinced with the reasons mentioned by the respondent and accordingly, allowed the application filed by the respondent subject to condition that the respondent shall pay Rs.1,000/-. Therefore, in the interest of justice the Court below has rightly entertained the application to set aside the *ex parte* order dated 19.01.2017 against the respondent.

7. With regards to quoting the wrong provision of law, in filing the application seeking to set aside the *ex parte* order, as rightly contended by the learned counsel for the respondent the Court below is competent enough to rectify and alter the same in accordance with law, in order to render justice to the parties. Accordingly, the Court below considered and passed

the reasonable order. Therefore, in the opinion of this Court, order impugned in the revision petition does not suffer from any infirmity to interfere with the same. There is no merit in the Civil Revision Petition and the same deserve for dismissal.

8. Accordingly, this Civil Revision Petition fails and it is dismissed.

No costs.

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Index : Yes / No
Internet : Yes/ No
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KRISHNANRAMASAMY,J.

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