



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1054 of 2021 &

C.R.P. (PD) (MD) No.1301 of 2021

and

C.M.P. (MD) Nos.6138 & 7512 of 2021

and

Caveat No.2235 of 2019

C.R.P. (NPD) (MD) No.1054 of 2021 :-

1.V.Perumal
2.V.Selvaraj
3.Saraswathi

.. Petitioners / Petitioners /
2 to 4 defendants

-vs-

Mohamed Ali

.. Respondent / Respondent /
Plaintiff

Prayer :- Petition filed under Section 115 of Code of Civil Procedure against the decretal and fair order made in I.A.No.02 of 2019 in O.S.No.15 of 2010 on the file of the I Additional District Judge (PCR), Trichy dated 13.11.2019.

For Petitioners : Mr.R.L.Dhilipan Pandian
For Respondent : Mr.V.Karuna

C.R.P. (PD) (MD) No.1301 of 2021 :-

V.Jaya

.. Petitioner / 1st Defendant

-vs-

1.Mohamed Ali
2.Perumal
3.Selvaraj
4.Saraswathi

.. Respondent / Plaintiff

.. Respondents / 2 to 4
defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 31.10.2012 made in O.S.No.15 of 2010 on the file of the I Additional District Judge (PCR), Trichy.



For Petitioner : Mr.R.Vijayakumar
for Mr.G.Mohankumar
For R1 : Mr.V.Karuna

ORDER

WEB COPY

These two revisions arise out of the proceedings in O.S.No.15 of 2010 on the file of the I Additional District Judge (PCR), Trichy.

2.The suit had been filed by the plaintiff against the revision petitioners for a specific performance of an agreement of sale dated 17.07.2009. It appears that the petitioners had remained ex-parte and consequently, an ex-parte decree dated 31.10.2012 came to be passed decreeing the suit. Thereafter, the revision petitioners in C.R.P.(NPD) (MD) No.1054 of 2021, who are defendants 2 to 4 in the suit, filed an application for condoning the delay of 2345 days in filing the petition to set aside the ex-parte decree in I.A.No.2 of 2019. In the application filed in support of the same, the petitioners would contend that they had entered appearance and filed written statement, but however, their advocate had not kept them informed about the suit and therefore, they were set ex-parte on 31.10.2012 and on the very same day, an ex-parte decree came to be passed. Even after service of the execution proceedings, their advocate had not conducted the case properly. Therefore, the revision petitioners in C.R.P.(NPD) (MD) No.1054 of 2021 sought to have the delay condoned and the decree set aside.

3.The plaintiff had filed a counter *inter alia* contending that not only was the ex-parte decree passed, but on the same day, it has been executed in favour of the plaintiff and it is only the delivery of possession, that is, pending and at this stage, such a petition to condone the delay had been filed. Therefore, the application deserves to be dismissed in limine.

4.The 1st defendant had also filed an application to condone the delay of 1522 days in filing the petition to set aside the ex-parte decree. She would contend that the written statement filed by the 2nd defendant dated 22.02.2012 was very sketchy and did not contain the requisite details. However, the learned Judge proceeded to dismiss both the applications. Defendants 2 to 4, challenging the orders passed in I.A.No.2 of 2019, filed C.R.P. (NPD) (MD) No.1054 of 2021.

5.The 1st defendant, on the other hand, had filed a revision under Article 227 of the Constitution of India in C.R.P.(PD) (MD) No.1301 of 2021 to set aside the ex-parte decree on the ground



that the judgment is not a judgment as contemplated under the Code of Civil Procedure.

6.The counsel for the petitioners would submit that the judgment in the suit for specific performance is a non-speaking one and it has been time and again stated that even in the case of an ex-parte decree, the Courts are directed to frame issues and pass reasoned order. If the judgment passed in the suit in O.S.No.15 of 2010 is considered, it does not confirm to these parameters.

7.For better appreciation of the contentions put forward by the petitioners, it is necessary to examine the aforesaid judgment. The judgment in O.S.No.15 of 2010 is extracted hereinbelow:-

"Plaint presented by under Order VII Rule 1 of the Civil Procedure Code.

Suit for specific performance of the agreement of sale dated 17.07.2009 directing the defendants to execute the sale deed in favour of the plaintiff in respect of the suit property described hereunder after there receiving the balance sale consideration, failing which to have the same done through process of court and for possession of the suit property and for permanent injunction against the defendants not to alienate the suit property to any other persons in any manner and grant to such other relief.

P.W.1 - present. Defendants called absent. Set Exparte. Proof Affidavit & Ex.A1 to Ex.A7 perused. Claim proved. Suit dismissed. Payment of balance consideration for 3 months."

8.A mere perusal of the judgment would manifestly prove the total non-application of mind and the mechanical fashion in which a judgment has been passed. In a suit for specific performance, it has been time and again reiterated that even if a defendant has not raised the defence of readiness and willingness on the part of the plaintiff, the Court is duty bound to consider the same, as the provision of Section 16(c) of the Specific Relief Act, 1963 mandates the plaintiff not only to aver but also to prove his readiness and willingness. Such a consideration is not evident in the impugned judgment. Therefore, this Court, exercising jurisdiction under Article 227 of the Constitution, is striking off the judgment in O.S.No.15 of 2010. Further, in the light of the fact that the judgment is being set aside, the defendants shall be given an opportunity to participate once again in the proceedings and therefore, the order dated 13.11.2019 passed in



I.A.No.2 of 2019 in O.S.No.15 of 2010 and the judgment and decree dated 31.10.2012 in O.S.No.15 of 2010 are set aside.

9.In the result, both the Civil Revision Petitions are allowed and the learned I Additional District Judge (PCR), Trichy is directed to once again consider the suit. The defendants shall file their written statement within a period of two weeks from the date of receipt of a copy of this order and the learned Judge, shall thereafter dispose of the suit within a period of five months from the date on which the written statement is filed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The I Additional District Judge (PCR), Trichy.

+1cc to V.Karuna, Advocate Sr.No.35233 dated 19.11.2021.

**C.R.P. (NPD) (MD) No.1054 of 2021 &
C.R.P. (PD) (MD) No.1301 of 2021
19.11.2021**

KS (CO)

SB(08.12.2021) 4P 3C