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CRP No.1103 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1103 of 2013

Vasanthakumari Anbalagan

..Petitioner

Vs.

1.Tamil Nadu Industrial Investments

Corporation Limited,

Rep. by its Chairman & Managing Director,

Having Office at No.27, Whites Road,

II Floor, Chennai – 14.

2.The Branch Manager,

Tamil Nadu Industrial Investments

Corporation Limited,

Rep. by its Chairman & Managing Direction,

Office at No.27, Whites Road,

II Floor, Chennai – 14.

3.C.S.Venkateswaran,

4.M/s.S.V.International,

Rep. by its Proprietor

C.S.Venkateswaran,

J-52, Anna Nagar East,

Chennai – 102.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order made in I.A.No.8499 of 2011 in O.S.No.5678 of 2001 dated 11.09.2012 on the file of the XV Assistant City Civil Judge, Chennai.



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For Petitioner : Mr.Adinarayana Rao

For Respondents

For R1 & 2 : Mr.R.V.Sundararajan

For R3 & 4 : No appearance

ORDER

This civil revision petition is filed as against the order passed in I.A.No.8499 of 2011 in O.S.No.5678 of 2001 dated 11.09.2012 on the file of the XV Assistant City Civil Judge, Chennai, thereby dismissing the petition to condone the delay in filing the petition to restore the suit.

2. The petitioner is the plaintiff, she filed a suit as against the respondents challenging the following reliefs;

“ a) Declaring that the action of the first and second defendant in taking possession of the plaintiff's immovable property as per letter dated 6.8.2001 more clearly described in the schedule of the plaint on the basis of an unregistered document alleged to be equitable mortgage alleged to be created by the plaintiff in favour of the first and second defendants, to be sham and nominal, illegal and therefore not binding on this plaintiff in any way or means whatsoever.

b) Granting consequential permanent injunction restraining the first and second defendant or their men or



servants or agents or successor in office from either alienating or selling or transferring or conveying or in any manner or means creating any encumbrance over the suit schedule property on the basis of the unlawful and illegal possession.

c) Granting Mandatory Injunction in favour of the plaintiff directing the first and second defendants to return and hand over the original title deeds of the suit schedule property in their unlawful custody from April 1996, in due, proper and perfect condition, to the plaintiff.

d) Directing the first and second defendants to pay Rs.300/- per mensem towards mesne profit to this plaintiff from the date of presentation of the plaint till date of judgment and decree in this suit.

e) Directing the defendants to pay the costs of the suit to the plaintiff.

f) Grant such further or other relief or reliefs as this Hon'ble Court may deem fit and proper made circumstances of the case and thus render justice.”

3. Pending suit, the respondents failed to file their written statements and as such, the trial Court had set the respondents exparte. The respondents filed a petition to set aside the exparte order along with a condone delay petition to condone the delay of 320 days in filing the petition to set aside the exparte



decree in I.A.No.1415 of 2006 in O.S.No.5678 of 2001. The condone delay petition was dismissed by the trial Court by an order dated 02.04.2007 for the reason that the respondents failed to state proper reasons to condone the delay of 320 days in filing the petition to set aside the ex-parte decree. Aggrieved by the same, the respondents herein filed CRP before this Court in CRP.No.3025 of 2008, which was allowed by this Court by setting aside the order passed by the trial Court, by an order dated 12.8.2009.

4. While allowing the above said CRP, this Court granted opportunity to the respondents to file their written statements and to frame issues thereon and to dispose the main suit, within a period of six months from the date of receipt of a copy of this order. Aggrieved by the same, the petitioner filed an appeal before the Hon'ble Supreme Court of India in SLP.Nos.784 and 785 of 2010. Though, it was filed in time, it was numbered only in the year 2010 and an interim order was granted on 02.11.2010. In the meanwhile, the suit was dismissed for default on 02.11.2009 itself. The petitioner did not have any knowledge about the dismissal of the suit for default. The respondents came to know about it only after filing the counter affidavit in SLP before the Hon'ble Supreme Court of India. In view of the counter affidavit filed by the respondents, the SLP was dismissed on 8.3.2011.



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5. The learned counsel for the petitioner would submit that while filing the counter affidavit, the respondents did not disclose about the dismissal of suit for default. Only at the time of arguments, they brought to the knowledge of the Hon'ble Supreme Court that the suit was dismissed for default. On the said submission, the Hon'ble Supreme Court of India dismissed the said SLP on 8.3.2011.

6. The learned counsel for the petitioner also contended that the respondents were already set as ex-parte and their condone delay petition to set aside the ex-parte decree was allowed by this Court. The petitioner had no knowledge about the dismissal of suit for default and as such, he is also entitled for same benefit that too she came to know about the dismissal of suit for default only when the respondents informed the Hon'ble Supreme Court of India. Therefore, he prays for same benefit to the petitioner to proceed with her suit.

7. The learned counsel for the respondent would submit that the suit was filed by the petitioner challenging the notice issued under Section 29 of State Financial Corporation Act. Thereafter, the respondents issued notice under



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Section 31 and 32 of State Financial Corporation Act as against the petitioner to claim Rs.2,28,05,105.31/- with further interest at the rate of 18.50% per annum on the sum of Rs.1,91,71,016/- in O.P.No.35 of 2011 before this Court and the same was ordered by this Court by an order dated 25.11.2011. Therefore, nothing survives in this suit filed by the petitioner and no purpose would be served if the suit is restored.

8. On perusal of counter affidavit filed by the respondents before the Hon'ble Supreme Court of India in SLP.Nos.16352 and 16353 of 2010 revealed that the suit filed by the petitioner before XV Assistant City Civil Court, Chennai, was dismissed for default and the suit in O.S.No.5678 of 2001 was dismissed for default on 2.11.2009 itself. Suppressing the said dismissal of the suit on default the petitioner filed Special Leave Petition on 17.12.2009. Only based on the counter affidavit filed by the respondents, the Hon'ble Supreme Court of India was pleased to dismiss the SLP. That apart, the reasons stated in the affidavit filed in support of the condone delay is not specified since the petitioner stated that only after filing the counter affidavit before the Hon'ble Supreme Court of India, she had knowledge about the dismissal of the suit for default. The petitioner being the plaintiff, she should know the status of the suit.



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9. It is seen that after just filing some papers before the Hon'ble Supreme Court of India, the petitioner had remained silent and the filing of the SLP before the Hon'ble Supreme Court of India itself is only to drag the proceedings before the trial Court. It is further seen that the petitioner filed SLP only on 17.12.2009 whereas the suit was dismissed even prior to it namely on 2.11.2009 itself. Therefore, the petitioner, suppressing the said fact and filed SLP before the Hon'ble Supreme Court of India and obtained interim order. Therefore, the reasons stated in the condone delay petition is not convincing and the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

10. In the result, the civil revision petition stands dismissed. No costs.

05.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The XV Assistant City Civil Judge,
Chennai.



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