



CRP.No. 745 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 745 of 2021

and

CMP.No.6168 of 2021

1.Sathursamy

2.Easwari

.. Petitioners

Versus

1. K.S. Shanmugham

2. N. Palanisamy

.. Respondents

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order dated 25.08.2020 in I.A.No. 1 of 2020 in O.S.No. 523 of 2011 passed by the learned V Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.L. Mouli

For Respondents : Mr.G. Purushothaman

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 25.08.2020 in I.A.No. 1 of 2020 in O.S.No. 523 of 2011 passed by the learned V Additional District and Sessions Judge,



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2. The revision petitioners herein are the defendants 5 & 6 and the respondents herein are the plaintiffs in the original suit.

3. The learned counsel for the petitioners/defendants 5 & 6 submitted that the respondents/plaintiffs are the agreement holders of the property and the petitioners/defendants 5 & 6 are the purchasers of the schedule mentioned property. The above suit was posted for trial on 24.07.2018 and subsequently, their counsel had not appeared on that day and they were called absent and defendants 5 & 6 were set ex-parte and the suit was decreed on 27.07.2018. The 5th defendant is a senior citizen, having various health ailments and the 6th defendant is an illiterate. The learned counsel for the defendants 5 & 6 did not inform about the consequences of ex-parte decree. However, the petitioners were affected by viral fever and Jaundice together and they were taking treatment. After receiving summons from the Court, the petitioners enquired their counsel and since he was not satisfied with the reply, the petitioners have applied copy application for obtaining decree copy and then they have entrusted



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the same with their new counsel. Only on perusing the decree, the new counsel came to know about the ex-parte decree having been passed against them. Therefore, the petitioners have filed the said IA to condone the delay of 388 days in filing the application to set aside the ex-parte decree. Hence, he prays to set aside the findings of the Court below.

4. Per contra, the learned counsel for the respondents/plaintiffs argued that the respondents/plaintiffs had filed the suit for specific performance against the defendants 1 to 4. During the pendency of the suit proceedings, the suit property was transferred by the petitioners/defendants 5 & 6 herein to a third party, who in turn had transferred it to the petitioners herein. The defendants 5 and 6 appeared through their counsel by filing written statement. He further submitted that the evidence of PW1 was let in on 08.11.2016 and the matter was posted for marking the documents, and at that stage, in order to avoid the trial of the suit, the petitioners filed Tr.O.P.No. 46 o 2017 before the District Judge, Coimbatore and the same was dismissed on 20.03.2018. The respondents/plaintiffs proceeded with their evidence and the defendants 1 to 4 did not contest, and the petitioners/defendants did not



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attend the Court proceedings and their Counsel also did not appear, and after giving several opportunities, the suit itself was taken up for disposal as the suit property had been alienated twice. The respondents decided to get back the advance amount with interest and costs, and they prayed the Court to pass a decree on 27.07.2018 for refund of the advance amount with interest. Subsequently, the respondents/plaintiffs engaged a counsel and they proceeded to file E.P.No.54 of 2019 on 28.02.2019 for realizing the decree amount by attachment and sale of the property.

5. The petitioners/defendants 5 & 6 filed counter statement, in which, it has been stated that they have also filed a petition to set aside the ex-parte decree. The counter statement does not even mention any where as to on which date, the petitioners came to know about the ex-parte decree. No sufficient reason was given as to which date the petitioners were not well, where he took treatment, from which Doctor/Hospital and when he became well, which are all conspicuously absent. He further submitted the reasons are totally insufficient to excuse the enormous delay of 388 days. Obviously the petitioners/defendants were watching the Court proceedings from the side lines and when it became obvious that the



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property would be attached and sold, they had chosen to file the said IA.

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The petitioners are playing with the process of the Court and their only aim is to harass these respondents/plaintiffs by delaying the execution of the decree, and it is nearly 11 years since the sale agreement was entered into and it is nearly 9 years since the suit has been filed and the respondents have paid a huge amount of Rs.20 lakhs as advance and the petitioners/defendants are only “*pendete-lite*” purchasers and they are not entitled for any indulgence from the Court. Hence there is no merit in this Revision and the same is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the respondents/plaintiffs have filed the suit in O.S.No.523 of 2011 before the V Additional District and Sessions Judge, Coimbatore, for specific performance as against the defendants 1 to 6. The defendants have contested the suit by filing written statement, denying all the averments made in the plaint. After perusing the records, the Court below passed an ex-parte judgment and decree on 27.07.2018. Subsequently, the



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petitioners/defendants 5 & 6 filed I.A.No.1 of 2019 under Section 5 of the Limitation Act, to condone the delay of 388 days in filing petition to set aside the ex-parte decree passed in O.S.No.523 of 2011. After analyzing the records, the Court below dismissed the application on 25.08.2020 on the ground that the petitioners have not shown sufficient cause to condone the delay of 388 days. Aggrieved by the said order, the petitioners/defendants 5 & 6 have filed this Civil Revision Petition.

8. Originally, the suit was filed by the respondents/plaintiffs for specific performance as against the defendants 1 to 6 based on the sale agreement dated 19.08.2008 to sell the suit property. Pending suit, the suit property was alienated in favour of the petitioners/defendants 5 & 6 herein. After framing of issues, the suit was taken up for trial and on the side of the plaintiffs, one witness was examined as PW1 and Ex.A1 to Ex.A32 were marked. During cross-examination of PW1, these petitioners filed Tr.O.P.No.46 of 2017 before the Principal District Court, Coimbatore seeking to transfer the suit from the file of IV Additional District Judge, Coimbatore, for trying it along with another suit in O.S.No.431 of 2013 and Tr.O.P.No. 46 of 2017 was dismissed on 20.03.2018. Thereafter, the



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case was re-posted on 24.07.2018 for cross examination of PW1. Even on that day, the defendants were absent and the petitioners/defendants 5 & 6 were set ex-parte on 27.07.2018. As the defendants failed to obey the decree, the respondents/plaintiffs filed EP.No.54 of 2019 on 28.02.2019 to recover the decree amount by way of attachment and sale of the suit property. Having received the notice, the petitioners have not chosen to appear in the said EP on 24.04.2019. As rightly contended by the learned counsel for the respondents/plaintiffs, the petitioners/defendants have not chosen to file the connected set aside petition immediately after receiving the notice from Executing Court, even after gaining knowledge about the ex-parte decree. Instead, this IA is filed only on 19.09.2019 after a lapse of nearly five months.

9. In the above context, it is useful to extract Paragraph No.4, of the affidavit filed by the petitioners/defendants 5 & 6, which reads thus:-

"4. I humbly submit that I had studied upto 12th standard in Thoothukudi District and after then I went to serve for Indian Army and I am an Ex-Service Man. I had wholly trusted my counsel and I am not acquainted with the legal procedures terms and sections. My



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counsel did not told me about the consequences of ex-parte and I was totally kept under dark regarding the case. Whenever, I contacted my counsel he convinced me and since I am unaware of legal proceedings I do know what to do. Further, I was affected by viral fever and jaundice together and I was taking treatment and after receiving the summons from the Hon'ble Court I enquired my counsel and since I was not satisfied with the reply of my counsel I had asked for return of bundle and I had applied copy application for obtaining decree copy and after then I had entrusted the same with my new counsel and after perusing the decree I came to know the consequences of ex-parte decree and since I am filing this application to condone the delay of 388 days in filing the connected application to set aside the ex-parte decree."

10. On a perusal of the impugned order dated 25.08.2020, it is seen that the learned counsel for the petitioners/defendants 5 & 6 in his arguments reiterated the reasons stated in the affidavit filed in support of the petition and contended that the petitioners are ignorant of the Court proceedings and that they were not informed of the date of proceedings by their earlier Advocate, as a result of which, they were set ex-parte. It is



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further contended that the reasons for the delay are properly explained by the petitioners and it is further submitted by the petitioners that to show the bona-fides of the petitioners, they are ready to deposit a sum of Rs.1,00,000/- and that they are ready to co-operate for disposal of the suit. The Court below erred in dismissing the IA filed to condone delay of 388 days in filing the petition to set aside the ex-parte decree on the ground that the petitioners/defendants 5 & 6 have not shown sufficient cause or reason to condone the delay and without considering the reasons stated in the affidavit filed by the petitioners, the Court below failed to consider the Memo filed by the petitioners before the Court below to show their bona-fides and they are ready to deposit Rs.1,00,000/- in the Court and if an opportunity is provided, and as the petitioners are bona-fide purchasers of the suit property, and as they are not aware of the pendency of the suit proceedings and sale agreement, the petitioners pray for one more opportunity to contest the suit on merits and in accordance with law. The suit is of the year 2011 filed for specific performance and sufficient reasons were shown in the affidavit filed in support of I.A. The Court below has failed to consider the same. Hence, this Court is of the view that the findings of the Court below are liable to be set aside.



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11. Accordingly, the Civil Revision Petition is allowed. The revision petitioners are directed to pay costs of **Rs.5,000/- (Rupees Five Thousand Only) to the respondents/plaintiffs** within a period of three weeks from the date of receipt of a copy of this order. The impugned order of the trial Court, dated 25.08.2020 made in I.A.No.1 of 2020 in O.S.N.523 of 2011 on the file of V Additional District and Sessions Judge, is set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Speaking order / Non speaking order

Neutral citation : Yes/No

msm

To

1. The V Additional District and Sessions Judge, Coimbatore.
2. The Section Officer, High Court, Madras.

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V.BHAVANI SUBBAROYAN, J.

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