



C.R.P.(NPD) Nos.2577 & 1020 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM : JUSTICE **N.SESHASAYEE**

C.R.P.(NPD) Nos.1020 & 2577 of 2019  
& CMP Nos.16962 & 6736 of 2019

J.Kishore Kumar  
A.S.Vijay Anand

.. Petitioner in CRP(NPD)No.2577 of 2019  
.. Petitioner in CRP(NPD)No.1020 of 2019

Vs.

A.S.Vijay Anand  
J.Kishore Kumar

... Respondent CRP(NPD)No.2577 of 2019  
.. Respondent CRP(NPD)No.1020 of 2019

**Prayer** : Civil Revision Petitions filed under Article 227 of the Constitution of India,

(i)against the fair and decretal order dated 30.04.2019 made in I.A.No.1530 of 2017 in O.S.No.1 of 2012 on the file of I Additional District Judge, Tiruppur(prayer in CRP(NDP)No.2577 of 2019).

(ii)against the fair and decretal order dated 29.01.2019 passed in E.A.No.3734/18 in EP No.2457/17 in O.S.No.1/12 on the file of learned 9th Assistant City Civil Judge at Chennai(prayer in CRP(NDP)No.1020 of 2019).

CRP(NDP)No.2577 of 2019:

For Petitioner : Mr.Isaac Mohanlal, Senior counsel  
assisted by Mr.Sivashanmugam  
For Respondent : Mr.R.Thiagarajan



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CRP(NDP)No.1020 of 2019:

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For Petitioner : Mr.R.Thiagarajan  
For Respondent : Mr.Isaac Mohanlal, Senior counsel  
assisted by Mr.Sivashanmugam

### **COMMON ORDER**

The revisions in C.R.P.(NPD) Nos.1020 & 2577 of 2019 arise in the following circumstances :

- A certain Kishore Kumar (the revision petitioner in CRP.No.2577/2019) has laid a suit in O.S.No.1/20212 on the file of I Additional District Judge, Tiruppur, for recovery of money, based on a cheque for a value of Rs.15.0 lakhs, against one Vijay Anand (the revision petitioner in CRP.No.1020 of 2019). The suit claim with interest is stated to be Rs.25,59,863.50p. The suit was decreed *ex parte* on 22.12.2015.
- The plaintiff would now approach the trial Court and had the decree transmitted for execution to the City Civil Court. This was ordered and accordingly E.P.No.2457/2017 came to be laid before the IX Assistant City Civil Court. Here the revision petitioner in CRP.No.1020/2019, who is the defendant in the suit/judgment debtor was set *ex parte* on 27.07.2018.
- On coming to know about this order, the judgment debtor



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approached the Execution Court in E.A.No.3734 of 2018, for setting aside the order. This was allowed by the Execution Court on 29.01.2019, on a condition that the revision petitioner in CRP.No.1020/2019 / judgment debtor would deposit 1/10<sup>th</sup> of the decretal sum.

- This is challenged by the judgment debtor in CRP.No.1020 of 2019.

2. The scene-II is at Tiruppur :

- The judgment debtor / revision petitioner in CRP.No.1020/2019 has moved the I Additional District Court, Tiruppur to have the *ex parte* decree dated 22.12.2015, set aside along with an application in I.A.No.1530/2017 to condone the delay. This application was allowed vide order dated 30.04.2019.
- This Court is informed that no suit summons were served in that case, and the revision petitioner was set *ex parte* based on substituted service through paper publication in a Tamil daily 'Malai Malar' on 19.12.2012. It appears the learned District Judge has applied Article 123 of the Limitation Act to condone



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the delay.

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3. This is now challenged by the plaintiff in CRP.No.2577 of 2019.

4. Heard Mr.Isaac Mohanlal, learned Senior counsel for the plaintiff (the petitioner in CRP(NPD) No.2577 of 2019 and the respondent in CRP(NPD) No.1020 of 2019) and Mr.R.Thiagarajan, learned counsel for the defendant.

5. It is an admitted fact that the suit summon was served on the defendant only by way of substituted service. Explanation to Article 123 of the Limitation Act reads as under:

*“Explanation.—For the purpose of this article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.”*

6. Therefore, inasmuch as substituted service goes out of consideration in terms of the Explanation to Article 123, the approach of the Court to the application filed for condonation of delay is justifiable. This Court, does not find any illegality or irregularity on the same and therefore, this Court does not find any merit in this petition.



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7. This Court is informed that subsequent to the order passed in I.A.No.1530 of 2017 for condonation of delay, the trial Court took up the application filed under Order IX Rule 13 on to its record in I.A.No.1530 of 2017, and allowed it on 30.04.2019. Therefore, the ex-parte decree is also now set aside and that was not challenged. This additional reason also weighed as to why this Court considered that the order passed by the trial Court in I.A.No.1530 of 2017 must be sustained. Accordingly, this Civil Revision Petition is dismissed.

8. Turning to CRP(NDP)No.1020 of 2019 is concerned, since the decree itself has been set aside, the Execution Petition is necessarily to be terminated. Hence, this Civil Revision Petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

N.SESHASAYEE.J.,

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