



C.R.P.No.1133 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.No.1133 of 2016
and CMP.No.6216 of 2016

P.Ranganathan

...Petitioner

Versus

1.S.Duraisamy (Died)

2.Saroja

3.Ravichandran

4.Sathyaseelan

5.Sasikala

...Respondents

(Respondents 2 to 5 brought on record as legal heirs of the deceased sole respondent viz S.Duraisamy vide Court order dated 29.03.2022 made in CMP.Nos.13121, 13123 and 13127 of 2021 in C.R.P. No.1133 of 2016)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.01.2007 made in I.A.No.1229 of 2005 in O.S.No.411 of 1995 on the file of the District Munsif Court, Perambalur.

For Petitioner

: Ms.S.Harshitha
for M/s.Usha Ramman

For R2 to R5

: M/s.C.Prabakar



C.R.P.No.1133 of 2016

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ORDER

Challenging the order of dismissal made in I.A.No.1229 of 2005 in O.S.No.411 of 1995, the petitioner has preferred the present revision.

2. The deceased respondent/plaintiff filed a suit in O.S.No.411 of 1995 on the file of the District Munsif Court, Perambalur, for declaration of title and for permanent injunction and to restrain the petitioner/defendant from interfering with the possession of the property. In the meanwhile, an application in I.A.No.1229 of 2005 was filed by the defendant to set aside the exparte order, dated 28.02.1997 and to take the written statement on file. However, the learned Judge, District Munsif Court, Perambalur, on 20.01.2007, dismissed the said Interlocutory Application, against which, the present Civil Revision Petition has been filed.

3. It is the contention of the learned counsel for the petitioner that though he tried to contact the petitioner, who is an employee of State Bank of India, to inform about the status of the case through several letters, he was unable to reach the petitioner due to his frequent transfers in job. According to the learned



C.R.P.No.1133 of 2016

counsel for the petitioner, an application to set aside the ex-parte order may be made before the ex-parte judgment is rendered on the main suit. He also submitted that an interlocutory application was filed by the petitioner along with the written statement, in order to avoid the delay in disposal of the suit. But the Court below failed to take note of the above facts and also without considering the fact that the Limitation Act has not prescribed any time limit for filing an application under Order IX Rule 7 of the Civil Procedure Code, dismissed the I.A.No.1229 of 2005 vide order dated 20.01.2007. Aggrieved against the same, the petitioner has preferred the present revision.

4. On the other hand, the learned counsel for the respondents 2 to 5 would submit that the contentions raised by the petitioner that due to his employment, he was unable to take note of the letters posted by his advocate and he came to know about the same only after the exparte order was passed, is frivolous and false. According to the learned counsel for the respondents, the Court below has rightly dismissed the application by stating that the reasons cited for the delay by the petitioner cannot be considered and hence, has rightly dismissed the I.A.No.1229 and therefore, the learned counsel for the respondents prayed for dismissal of the revision.



C.R.P.No.1133 of 2016

WEB COPY

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials placed before this Court.

6. Perusal of the impugned order would go to show that after receipt of summons in the suit, 1st defendant had entered appearance through his counsel and also took time for filing written statement. However, after getting number of adjournments, he failed to file the written statement and also failed to turn up on the date of hearing, as a result of which, he was set ex-parte and an ex-parte trial was conducted and the same resulted in the passing of an ex-parte decree on 28.02.1997. It is pertinent to note that the petitioner/1st defendant, who suffered such an ex-parte decree, did not approach the Court within the prescribed time limit with an application to set aside the above said ex-parte decree.

7. Considering the above facts and circumstances, this Court is of the considered opinion that the reasons adduced by the petitioner for condoning his absence on 28.02.1997 for not filing the written statement, is *per se* false. It is also evident that the petitioner, being a bank employee, it is his bounden duty to know the status of his case. The Court below has observed in its finding that the



C.R.P.No.1133 of 2016

reason stated by the revision petitioner that he did not receive the letter from his counsel, cannot be accepted at this modern age where the technology development has made the information at various places to reach at no point of time, after 8 years, that too, after listing the case, petition filed to set aside exparte order is not acceptable and has rightly dismissed the petition and therefore, the said order does not warrant any interference of this Court. Accordingly, the Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15.06.2022

gv/sts

Index: Yes/ No

Speaking Order / Non-Speaking Order



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C.R.P.No.1133 of 2016

J.NISHA BANU, J.

sts

To:

- 1) The District Munsif Court,
Perambalur.
- 2) The Section Officer, V.R. Section,
Madras High Court.

Order made in
C.R.P.No.1133 of 2016

Dated:
15.06.2022