



C.R.P.(NPD)No.1513 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.(NPD)No.1513 of 2016

Pethan

...Petitioner

Versus

1.Murugan
2.Megala

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decretal order of the learned Subordinate Judge's Court, Namakkal, made in I.A.No.458 of 2013, in O.S.No.154 of 2010, dated 27.01.2016

For Petitioner :Mr.T.L.Thirumalaisamy

For Respondent :No Appearance

O R D E R

The Civil Revision Petition is filed against the dismissal of petition seeking to condone the delay of 51 days in filing petition to set aside the ex-parte decree obtained by the respondents in O.S.No.154 of 2010 on the file of the Subordinate Court, Namakkal.



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2. The 10th defendant is the revision petitioner herein. The suit was filed by the respondents against the defendants 1 to 9, seeking specific performance of the sale agreement dated 07.07.2010. The revision petitioner is the subsequent purchaser of the property which is the subject matter of the agreement and therefore he was impleaded as 10th defendant by an order dated 15.02.2011 made in I.A.No.993 of 2010. Subsequently, an exparte decree was passed on 26.07.2012. The revision petitioner filed an application to set aside the ex-parte decree with a delay of 51 days. An application was filed in I.A.No.458 of 2012, seeking condonation of the delay in filing the petition to set aside the ex-parte decree. In support of his petition to condone the delay, the revision petitioner filed an affidavit stating that he was suffering from Jaundice at relevant time and he had taken native treatment for the same, therefore, he was not able to meet his counsel and instruct him suitably to file a written statement. Further it was stated that the amended copy of the plaint was not served on him as mandated under Rule 10(4) of CPC and hence he was not in a position to give a suitable instructions to his counsel for filing written statement and consequently, the ex-parte decree was passed.



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3. The respondents, filed their counter, denying the averments found in the affidavit of the revision petitioner and sought for dismissal of condone delay petition.

4. The revision petitioner was examined as PW.1 and the first respondent/D1 viz., Murugesan was examined as RW.1. The Court below dismissed the petition to condone the delay by relying on Ex.R1- docket order in C.C.No.109 of 2012 on the file of Judicial Magistrate No.I, Namakkal. According to the Court below, as per the endorsement in Ex.R1, the revision petitioner appeared before the Judicial Magistrate on hearing dates between 12.06.2012 to 13.12.2012 and therefore the allegation of illness is not acceptable one and the same is false.

5. The learned counsel appearing for the petitioner submitted that he was impleaded as a 10th defendant in the suit only on 15.02.2011 by virtue of order passed in I.A.No.993 of 2010 and thereafter the copy of amended plaint was not served on him and hence, he was not in a position to give suitable instruction to his counsel to file a written statement. Though this point was raised by the revision petitioner in his affidavit, it was not adverted to by the



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lower Court and hence the order passed by the Court below requires interference by this Court. Though respondents are served and their name appear in the list, there is no representation for respondents.

6. The revision petitioner in the affidavit filed in support of his petition to condone the delay, has clearly stated that the copy of amended plaint was not served on him, subsequent to his impleadment. This specific averment of the revision petitioner was not at all contravened by the respondent/plaintiff in his counter. The Court below in the impugned order, stated that the averment of the revision petitioner that amended copies of the plaint was not served on him is not believable. But however, it has not stated that the copies of amended plaint was really served on the defendant after his impleadment.

7. Order 1 Rule 10(4) and (5) of CPC reads as follows:

“(4) Where defendant added, plaint to be amended:- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the



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summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877)4, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

8. Reading of order 1 Rule 10 (4) and (5) makes it clear that whenever the defendant is impleaded in the suit, it is incumbent on the part of the plaintiff to serve the amended copies of plaint and summons on the newly impleaded defendant and the same is mandatory. The words "shall" employed in sub Rule 4 make it explicit that service of amended copy of plaint on newly added defendant is mandatory. The Sub Rule 10 (5) of Order I also supplements the view that service of amended plaint copy on the new defendant is mandatory because it declares proceedings against impleaded defendant shall be deemed to have begun only on service of the summons. Therefore, proceedings against newly impleaded defendant deemed to have begun only after complying procedure contemplated under Rule 10(4) of Order I [i.e.,



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service of amended copies of plaint and summons]. It is common knowledge

that unless the copy of the plaint is served on the defendant he may not be in a position to file his written statement. Admittedly, the revision petitioner was not a party to the suit originally and he was impleaded as a party only by way of order passed in I.A.No.993 of 2010, dated 15.02.2011. Hence, as per the mandate of order 1 Rule 10(4), the amended copies of the plaint and summons should necessarily be served on the new defendant, so as to enable him to file his written statement. However, in the case on hand, there is nothing on record to show that amended copies of plaint had been served on the defendant. Even though, an averment to that effect had been made by the revision petitioner in his affidavit, the same was not at all contravened by the respondent. In such a view of the matter, it can be safely taken that amended copies of the plaint has not been served on the revision petitioner, who is a newly added defendant. The delay in filing the petition to set aside the ex-parte decree is also only 51 days. Having regard to the fact that the procedure contemplated under Order 1 Rule 10(4) of CPC has not been complied with and also having regard to the length of the delay, this Court deems it appropriate that the order passed by the court below is liable to be set aside. The order passed in I.A.No.458 of 2012, in O.S.No.154 of 2010 is accordingly set aside.



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9. The Civil Revision Petition is allowed subject to the condition that the petitioner deposits a sum of Rs.2,000/- (Rupees two thousand only) before the Court below within a period of four weeks from the date of receipt of a copy of this order. The respondents are permitted to withdraw said sum, on such deposit. The Court below is directed to take up the petition to set aside the ex-parte decree and dispose of the same as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

06.06.2022

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Index: Yes/ No

Speaking Order / Non-Speaking Order



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S.SOUNTHAR, J.

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To
The Subordinate Judge's Court,
Namakkal.

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