



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.4267 of 2017

and

CMP.No.20009 of 2017

1.Sivagangai
2.Tamilselvi
3.Lalitha

... Petitioners/Petitioners

Vs.

N.Sambath

... Respondent / Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 04.09.2017 made in I.A.No.33 of 2015 in O.S.No.219 of 2008 passed by the Learned Principal Sub Judge, Puducherry.

For Petitioner .. Mr.R.Thiagarajan

For Respondent .. Mr.S.Vijayan Subramanian

**ORDER**

WEB COPY The defendants in O.S.No.219 of 2008 on the file of the Principal Sub Court, Puducherry are the revision petitioners herein. They are aggrieved by an order dated 04.09.2017 in I.A.No.33 of 2015 which Interlocutory Application had been filed by them under Section 5 of the Limitation Act, seeking to condone the delay of 1284 days in filing a petition to set aside the exparte Judgment and Decree in the aforementioned suit. That exparte decree was passed on 07.06.2011.

2.O.S.No.219 of 2008 had been filed by the respondent herein seeking specific performance of an Agreement of Sale dated 12.11.2005 and in the alternate, seeking refund of the advance amount in accordance with the Agreement of Sale and also for permanent injunction restraining the petitioners / defendants therein from dealing with the property in accordance with the terms and conditions of the Agreement of Sale.

3.The petitioners herein joined issue with the contentions raised in the plaint and filed a written statement. The written statement had been filed by the 3rd defendant, Lalitha who had also verified the written statement and the same had been adopted by the 1st and 2nd defendants.



4.It must be kept in mind that the 3rd defendant, Lalitha and the 2nd defendant Tamilselvi are the daughters of the 1st defendant, Sivagangai.

5.They had raised various contentions in the written statement, necessitating issues to be framed. Parties were invited to graze witness box. Thereafter, the trial commenced and the respondent herein was examined as PW-1. He was examined on 25.04.2011. He marked Exs.A1 to A4. Ex.A1 was the original Agreement of Sale. Ex.A2 was the copy of Advocate notice and Exs.A3 and A4 were the postal receipts and acknowledgment card.

6.The matter was then posted for cross-examination of PW-1. Since the present petitioners / defendants did not come forward to cross-examine PW-1 on 07.06.2011, on the very same day they were called absent and they were set exparte. The learned Sub Judge also held that he had examined the exhibits and that the claim was proved and that the suit was decreed with costs as prayed for.

7.After about 1284 days, the present petitioners had filed I.A.No.33 of 2015 seeking to condone the delay in filing an application



to set aside the exparte decree. The affidavit in support of that application was also filed by the 3rd defendant to the suit, Lalitha.

8. In the affidavit filed in support of the said application, seeking to condone the delay, she stated in the relevant portions that she had been married to one Purushothaman and that she had a daughter by name Harini who was born on 27.02.2007 and in the year 2009, Harini had become handicapped and the Government of Puducherry had also extended financial aid and in July 2011, Harini suffered from brain fever and was bed ridden.

9. In the meanwhile, owing to these circumstances, Purushothaman, apparently fed up, committed suicide and died on 15.04.2011. It was stated by the 3rd petitioner herein / 3rd defendant that there was distress in the family and when the matter came up on 07.06.2011, for cross-examination of PW-1, she was not in a position to give instructions to her counsel and did not appear before the Court. It was stated that on the same day, the suit had been decreed exparte.



10. However, that fact was not to her knowledge and later she stated that the daughter Harini also died on 14.12.2013 and she was unstable and restless for many months and also suffered from jaundice and finally, after 1284 days she had filed an application seeking condonation of the delay for the reasons stated aforementioned.

11. A counter had been filed on behalf of the respondent denying and disputing each and every fact stated. It was specifically stated that the Court should not accept the fact that the deponent of the affidavit was in distress owing to the death of her husband or the death of her daughter and that she not able to inform the advocate of such circumstance. It was pointed out there was no representation on 15.06.2011 and on 07.06.2011 and that the delay had not been explained properly. It was also insisted that each day's delay has to be explained and it was also stated that the reasons given were false, frivolous and it was also stated that the petitioner was not diligent in conducting the case and therefore has no locus standi.

12. The records as presented before this Court reveal that the 3rd petitioner herein / 3rd defendant Lalitha had actually grazed the witness



box and had filed documents and was also cross-examined. She had filed document which were marked namely, Ex.P1 / Birth Certificate of daughter Harini, Ex.P2/ Certificate for persons with disability issued by the Department of Neurology, Government Hospital, Puducherry dated 31.03.2009, Ex.P3 / Death Certificate of her husband Purushothaman on 15.04.2011 and Ex.P4 / Death Certificate of Harini on 14.12.2013. She was also cross-examined. During cross-examination, she stated that there were two other petitioners who knew about the factum of the exparte judgment being passed, but she denied that she was informed about exparte judgment by the counsel. However, she further stated that she came to know the exparte decree only in the year 2014.

13.On the basis of the petition, counter and the evidence presented, the learned Principal Sub Judge, Puducherry by order dated 04.09.2017 dismissed I.A.No.33 of 2015.

14.In the reasons given, learned Principal Sub Judge, Puducherry, it had been stated that on 07.06.2011, the defendants or their counsel were not present and therefore, they were said exparte. Further, the learned Principal Sub Judge, stated that medical records had not been produced to prove that the deponent of the affidavit had suffered from ailments and was taking treatment at Kangarampalayam. It was also



stated that no reasons had been given for the absence of the 1st and 2nd defendants. It was also stated that the daughter died on 14.12.2013 and the petition was filed only in 2015. The learned Principal Sub Judge, Puducherry also stated “*as per our Hon'ble Apex Court*” without giving the citations of the judgments, that while considering the delay condonation petitions each and every day delay has to be explained to the satisfaction of the Court.

15.It was also more interestingly stated by the learned Principal Sub Judge, that the deponent of the affidavit was not ready to get into the witness box and depose her inability to file an application. That statement is factually wrong. The learned Principal Sub Judge had not examined the records of Exs.P1 to P4, which were marked by the witness. The witness had also been cross-examined. Finally, the learned Judge dismissed the application and rejected the reasons for the delay.

16.Heard arguments advanced by Mr.R.Thiyagarajan, learned counsel for the revision petitioners and Mr.S.Vijayan Subramanian, learned counsel for the respondent.



17.It had been pointed out by Mr.R.Thiyagarajan, learned counsel for the revision petitioners that bonafide reasons had been advanced for condoning the delay of 1284 days and that the said reasons should have been examined in proper prospective by the learned Principal Sub Judge, Pudcherry. It had also been pointed out by the learned counsel that the exparte judgment cannot stand the scrutiny of this Court as it could not pass any of the stipulations under Order 20 Rule 5 CPC. It was also stated that the schedule mentioned property is not transferable and the learned counsel also stated that it was for that particular reason that Execution Petition had also not been filed. It was also pointed out that though documents had been filed and the witness had actually adduced evidence, the Principal Sub Judge, Puducherry, had misdirected himself by stating that the witness did not come forward to give evidence.

18.Mr.S.Vijayan Subramanian, learned counsel for the respondent, on the other hand, disputed the contentions raised by the revision petitioners. He stated that the reasons advanced cannot be a ground to condone the delay of 1284 days. The learned counsel stated that the husband of the 3rd petitioner alone had died and that would not prevent the 1st and 2nd petitioners from questioning the exparte judgment and



stated that nothing prevented them from filing necessary application. It was also stated that the husband is a third party to the suit and his death would not be a material fact to be considered by the Court. It was also stated that the daughter died only in the year 2013 and there is no explanation as to why this application had not been filed earlier or after the death of the daughter. The learned counsel, finally stated that if this Court were to allow this Civil Revision Petition, then these sorts of applications would be regularly filed and litigants would continue to remain exparte and he therefore urged that this Court should not allow this sort of application. The learned counsel finally stated that the application should be dismissed.

19.Mr.R.Thiyagarajan, learned counsel for the petitioners relied on a judgment of a learned Single Judge of this Court reported in **2021 (3) CTC 387, Brahmand Farm Lands Ltd., v. K.Venkatesan**, wherein, while examining an exparte judgment, the learned Single Judge had examined whether it was in conformity with Order 20 Rule 4(1) CPC. There the revision petition was filed questioning the order dismissing an application seeking to condone the delay of 793 in filing the petition to set aside the exparte decree. The learned Single Judge had stated while



examining the exparte decree, that the Trial Court had not framed any issues and had also not considered any issue. It was also pointed out by the learned Single Judge that the reasons given should only be sufficient and each and everyday's delay need not be explained. It was also stated that a suit for specific performance has to be examined on its merits and in that particular case it was found that the judgment itself was not a judgment in the eyes of law.

20.I have carefully considered the arguments advanced and also perused the material records.

21.The respondent herein had filed a suit for specific performance. The agreement is not a registered agreement. The agreement is dated 12.11.2005. Whether registration of the agreement is essential or not is an issue to be examined by the trial Court, whenever the agreement of sale is presented for consideration.

22.Thereafter, written statement had been filed.

23.Once contentions have been raised in the written statement, then there is an obligation placed on every Trial Judge to frame issues and answer issues. There may not be materials to answer issues, but atleast the dispute should have been reduced and issues should have been framed and decision should have been given on those issues. Framing of



issues is one of the essential part of any judgment of a Trial Court, whether the judgment is based on the evidence adduced by both the parties or whether it is based on the evidence adduced by anyone of the parties. Even when the plaintiff alone had let in evidence and which the evidence, the defendant had not come forward to cross-examine, still a mandatory obligation is placed on the Trial Court to examine the contentions raised in the written statement. The finding whether the statement by the plaintiff can be taken at its face value or whether it withstood scrutiny by the Court must be stated even in an exparte judgment.

24. In the instant case, in the judgment it had only been stated after extracting the relief sought in the plaint, that the witness was examined as PW-1 and the matter was posted for cross-examination on 07.06.2011, and the witness was not cross-examined and therefore, the defendants were set exparte and that therefore, the suit was decreed.

25. The learned Trial Judge need not have wasted a sheet of paper to write that particular judgment. He need not have even wasted the ink of the office to write that particular judgment. It is not at all a judgment.



He might as well written any other matter in a piece of paper and have put it up in the Court records. I am deeply distressed by the nature of the judgment passed by the learned Principal Sub Judge, Puducherry.

26. Even otherwise, it is obligatory on my part to examine the reasons given for the delay. I started by stating that the written statement had been filed only by the 3rd defendant, Lalitha and that she had verified the written statement. The written statement filed by her had been adopted by the 1st and 2nd defendants. Even during cross-examination in the application, she had stated that the 1st and 2nd petitioners / 1st and 2nd defendants knew about the case, but did not know about the circumstances surrounding the case. That was a statement made during cross-examination, wherein, she had very specifically stated that the 1st and 2nd defendants did not know about the circumstances surrounding the case. When that be the case, it was she who had defended the case and who had signed the written statement and who had verified the written statement. Her daughter suffered with neurology issues and with respect to that, a certificate had been issued by the Neurology Department, Government Hospital Puducherry. In view of that particular fact, the husband had committed suicide and died. Later her daughter had also



died. The statement by a wife that the husband died by committing suicide, under any circumstance, should be taken as a statement which should not be disputed or contested. The Death Certificate of the husband has been filed as a document. The Death Certificate of the daughter has also been filed as document.

27.The learned Judge also stated in the order impugned that the witness did not graze the witness box. Both the learned Principal Sub Judge, who had given the exparte judgment and the learned Principal Sub Judge, who had passed the order now impugned have apparently no inclination to examine the records of the Court.

28.Even while passing this particular order, I had to turn the pages of the Court records to find what Exs.A1, A2, A3 and A4 were. This is a preliminary examination to be done before passing any order. Even though he had the records of the Court bundle on his desk, I am really surprised that the learned Principal Sub Judges, who had passed the order now under revision had stated that the witness had not grazed the witness box. The witness had actually entered the witness box was examined in chief, marked documents and was also cross-examined. The entire order



now questioned in this revision is perverse. There has been pre-determined intention to dismiss the application. The order under revision is a nullity and non est and cannot operate in the eyes of law.

29.The order dated 04.07.2009 in I.A.No.33 of 2015 in O.S.No.219 of 2008 passed by the learned Principal Sub Judge, Puducherry, has to be set aside and it is set aside. The delay of 1284 days in filing application to set aside the exparte judgment and decree dated 07.06.2011 in O.S.No.219 of 2008 is condoned.

30.With the above observations, the present Civil Revision Petition is allowed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.03.2022

Internet:Yes/No

Index:Yes/No

smv

To

The Principal Sub Court, Puducherry.



WEB COPY



15

C.V.KARTHIKEYAN,J.

Smv

C.R.P.NPD.No.4267 of 2017
and
CMP.No.20009 of 2017

16.03.2022