



C.R.P. (NPD) No.4734 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. (NPD) No.4734 of 2017
and C.M.P.No.13869 of 2018

Shyamala

W/o M.Thangaraj

. . . Petitioner/Defendant

Vs.

R.Dakshinamoorthy

S/o T.M.Rajamanickam Sendapriyar

. . . Respondent/Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.10.2017 made in I.A.No.102 of 2016 in O.S.No.21 of 2012 on the file of the Principal District and Sessions Judge, Thiruvavarur.

For Petitioner : Mr.Manuraj
For Respondent : Mr.B.Ramamoorthy

ORDER

The Revision Petitioner herein is the defendant in the suit in O.S.No.21 of 2012, on the file of the Principal District and Sessions Court, Thiruvavarur,



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which was filed by the respondent/plaintiff herein for the relief of specific performance and to execute the sale deed dated 06.12.2004 in respect of the suit properties.

2. Due to non-appearance of the defendant's side, the Trial Court passed *ex-parte* decree by Judgment dated 11.06.2013 as prayed for in favour of the plaintiff. Thereafter, the defendant has filed the application in I.A.No.102 of 2016 before the Trial Court to set aside the *exparte* decree dated 11.06.2013 with condonation of delay of 1070 days.

3. The learned counsel for the petitioner/defendant would submit that no summon was served on the petitioner. Even though, the plaintiff was very well aware of the correct address of the defendant, he has not sent suit summons to the defendant. Purposefully summons were served on the wrong address. Hence, she was set *exparte* by the Trial Court on 11.06.2013.

4. On 29.01.2012, the petitioner's younger son met with a major accident, which was resulted in partial disability. Due to the illness of her son, entire



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family was collapsed and they were not in a position to concentrate on the suit proceedings. Hence, the delay of 1070 days had occurred, in filing the petition to set aside the *exparte* decree. The said application was objected by the respondent/plaintiff, stating that the petitioner/defendant was purposefully evaded the court proceedings and not even appeared before the Court below, and having received the summons in the execution petition, she wantonly not appeared and now, filed this vexatious petition.

5.Considering the submissions made by the learned counsel on either side, the Trial Court has held that the reason for delay has not been explained by the petitioner/defendant with sufficient cause and accordingly dismissed the petition.

6.Challenging the said finding, the petitioner/defendant has preferred this Civil Revision Petition.

7.The learned counsel for the petitioner/defendant would submit that the learned Trial Judge failed to take note that no summons were served with



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proper address and the petitioner was set exparte, without proper service of notice and the same is liable to be set aside.

8.By way of reply, the learned counsel for the respondent/plaintiff submits that even on perusal of the affidavit filed on behalf of the petitioner/defendant would reveal that she has not furnished sufficient reason for the delay and the learned Trial Judge has rightly appreciated those aspect and dismissed the application, filed to condone the delay of 1070 days in filing the petition to set aside the exparte decree.

9.The main contention of the petitioner/defendant is that no summons were served to her, in the Trial proceedings as well as in the execution proceedings. Admittedly, on perusal of the plaint, the plaintiff himself made an endorsement that pre-suit notice was returned as 'no such person'. Thereafter, he filed the said suit. In the plaint also, the plaintiff gave the address of the defendant, which is not related with the defendant, because in the pre-suit notice also, the same address was mentioned and the notice was also returned as 'no such addressee'. There is no record on the side of the plaintiff, that they



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took steps to send notice to the correct address of the defendant, because as in the cause title, the address of the defendant is No.11/482, Pachayappa Street, Mogappair East, Chennai, but as per the contention of the petitioner/defendant, she is residing in No.11/376, Kannadasan Nagar, Mogappair East, Chennai. She is not residing in the address, which is mentioned in the plaint schedule. Therefore, the entire proceedings, including the execution proceedings, notice was served on the wrong address of the petitioner/defendant as discussed above. Litigant has to be given fair chance to prove her case, provided the plaintiff also served the notice to the defendant with correct address.

10.Considering the facts of the case, from the beginning, i.e., from the date of filing of the suit itself, notice was not served to the defendant with correct address. Further, the defendant has given the complaint to the police with regard to land grabbing from her present address, viz., No.11/376, Kannadasan Nagar, Mogappair East, Chennai. As per her affidavit, due to her son's illness, the defendant could not follow the court proceedings. So all these years, she waited for the justice and the reasons assigned by the



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petitioner/defendant is justifiable and this Court is inclined to allow this petition.

11. Accordingly, this Civil Revision Petition stands allowed and the order dated 04.10.2017 passed in I.A.No.102 of 2016 in O.S.No.21 of 2012 is hereby set aside. The defendant is directed to file written statement and on receipt of the same, the plaintiff is at liberty to file reply statement within a period of six weeks. Thereafter, the learned Principal District and Sessions Judge, Thiruvarur, is directed to dispose of the suit in O.S.No.21 of 2012 within a period of six months. No costs. Consequently connected miscellaneous petition is closed.

26.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

- 1.The Principal District and Sessions Judge, Thiruvarur.
- 2.The Section Officer, V.R.Section, High Court of Madras.

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