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CRP.No.3996 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3996 of 2018

and

CMP.No.22144 of 2018

1. Tamilarasan (Died)
2. Jayakantham
3. Raja,
4. Elavrasan
Petitioners

..

Versus

Suresh

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.08.2018 made in I.A.No.379 of 2016 in O.S.No.142 of 2012 on the file of Sub-Ordinate Judge's Court at Kallakurichi.

For Petitioner : Mr.P. Valliappan

For Respondent : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioner/defendant seeking to set aside the fair and decretal order dated 07.08.2018 made in I.A.No.379 of 2016 in O.S.No.142 of 2012 on the file of Sub-Ordinate Judge's Court at Kallakurichi.

2. The petitioner is the defendants and the respondent is the plaintiff in the original suit.

3. The case of the petitioners is that the respondent/plaintiff filed a suit in O.S.No.142 of 2015 before the Sub-Ordinate Judge's Court at Kallakurichi for specific performance of contract and other consequential relief. Due to non-appearance of the defendant's side, the Trial Court passed ex-parte decree by Judgment dated 18.06.2013 as prayed for in favour of the plaintiff. Thereafter, the defendant has filed the application in I.A.No.379 of 2016 before the Trial Court to set aside the exparte decree dated 18.06.2013 with condonation of delay of 963 days. After hearing both sides, the Trial Court dismissed the aforesaid application being not



satisfied with the reasons stated by the defendant therein. Challenging the aforesaid findings of the Trial Court, the defendant/petitioner herein has filed the present Civil Revision Petition to set aside the same.

4.The learned counsel for the petitioners would submit that the defendant/1st petitioner herein was not aware of the exparte decree passed by the Trial Court. During the pendency of the suit, the defendant was in Mumbai with his relative's house for 2 1/2 years due to his sons did not take care of him in the family dispute. After returning to his home, he came to know about the suit proceedings. Then, he immediately filed the application in I.A. No.379 of 2016 for condonation of delay under Order 9 Rule 13 of the C.P.C. Without considering the aforesaid facts and age of the defendant/1st petitioner herein, now, as he died, his legal heirs are brought on record in the petition, the learned Trial Judge dismissed the said application in stead of allowing the petitioner to contest the suit on merit even though the Trial Court passed the Ex-parte decree without hearing the contention of the defendant's side. As the petitioner has a good defense in the suit to prove on his side and if delay is not condoned, the petitioner would lose his property. As the defendant/1st petitioner died, In



support of his argument, the learned counsel for the petitioner has relied on the Judgment dated 08.07.2019 passed by the Apex Court in the case of Robin Thapa Vs. Rohit Dora reported in 2019(6) CTC 344 wherein it is observed as follows:

"...12... The appellant came to be served Notice of the Execution proceedings through said messenger on 27.03.2015. Thus, the case of the appellant that appellant came to know about the passing of the Decree only on 17.11.2015, cannot be acted upon. This is besides noticing that in execution of the Decree, the Sale Deed has been executed in favour of the defendant and it is only thereafter, that despite receipt of the Notice, dated 27.03.2015, the Appellant has set up the case that he came to know of the passing of the decree only sever months after."

13. The matter arises from a Suit for Specific Performance. It may be true that there is a case for the respondent that the Appellant has actually let out the building on rent. The Appellant's case is that this the Appellant's Residential house and the matter is a Loan transaction. Specific relief is undoubtedly a discretionary relief. Appellant has submitted that the Appellant is prepared to deposit the entire amount spent by the Respondent towards getting Sale Deed executed. We would



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think that the interest of justice demands that subject to putting the Appellant on terms, an opportunity should be given to the Appellant to contest the case and the case must be directed to be disposed of within the time limit. Accordingly, we the allow the appeal and set aside the impugned order subject to the following conditions:"

5. In the counter filed by the plaintiff/respondent herein would submit that the defendant has not taken any steps to set aside the exparte decree passed by the Trial Court in time even though he was very well aware of the suit proceedings. The defendant has filed the application with the intention to drag on the suit proceedings. The 1st petitioner did not go to Mumbai during the pendency of the suit, he was in his native place knowing the details of suit proceedings. The defendant/1st petitioner herein was very well available at the time of execution of proceedings in E.P.No.4 of 2015. The Execution Court has executed sale deed in favour of the plaintiff/respondent herein on 23.12.2014 vide document No.234 of 2015 at Rishivandiyam Sub Registrar Office. Thereafter, the plaintiff/respondent is in possession and in enjoyment of the suit property from the date of registration. Even after knowing all these facts, the defendants/petitioners have willfully filed the application for condonation of delay 962 days with



the bad intention to extract money from the plaintiff/respondent herein.

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6. Heard the learned counsel for the petitioners and perused the materials available on record. There is no representation for the respondent.

7. On a perusal of the records, it is seen that at the time of filing of the suit, the age of the defendant was at 61 years, he is now aged about 71 years who is also died and hence his legal heirs are brought on record in this petition. Admittedly, when the defendant is the original owner of the property, the plaintiff has filed the suit in O.S. No.142 of 2012 praying for specific performance of contract. Due to the absence of the defendant side, the Trial Court passed Exparte Decree dated 18.06.2013 based on the Ex.A1 dated 29.08.2011-Sale Agreement, without hearing the contentions on the side of the defendant to prove on his side. Further, even in the execution petition in E.P. No.4 of 2015, the defendant who is owner of the suit property, was not served summon properly and without giving proper opportunity to the defendant to contest on his side, the suit property to the extent of 2 acres and 57 cents was registered in favour of the



plaintiff/respondent herein based on the exparte decree dated 18.06.2013

which was passed like cryptic order mechanically without any discussion.

Hence, it cannot be accepted since the plaintiff has not succeed the suit on merit and wants to take away the suit property by obtaining the exparte decree dated 18.06.2013 passed by the Trial Court.

8. Under such circumstances, having considered the aforesaid observation of the Apex Court and the facts and circumstances of the case, this Court is inclined to allow this petition giving one more opportunity to the petitioners herein to contest the suit on merit on condition of payment of Rs.5,000/- to the credit of the Original Suit in O.S. No.142 of 2012 within a period of three weeks from the date of receipt of copy of this order without fail. The Trial Court is hereby directed to restore the suit and dispose of the same on merit within a period of six months after full pledged trial by considering the oral and documentary evidence put forth by both parties. Both parties are given liberty to file reply and additional written statement with regard to the case before the Trial Court.

T.V.THAMILSELVI, J.

Lbm



9. In the result, the Revision Petition is allowed by setting aside the impugned order dated 07.08.2018 made in I.A.No.379 of 2016 in O.S. No.142 of 2012 passed by the Trial Court. No costs. Consequently, the connected miscellaneous petition is closed.

01.11.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Sub-Ordinate Judge's Court at Kallakurichi.
2. The Section Officer, V.R.Section
High Court, Madras.

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and
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