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C.R.P.No.2238 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2023

CORAM

THE HON'BLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2238 of 2019

J.S.T.Nallappa

...Petitioner

Vs.

C.Mahendiran

...Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of Cr.P.C, to set aside the fair order and decreetal order passed in I.A.No.579 of 2016 in O.S.No.100 of 2003 dated 19.12.2018 on the file of the Court of District Munsif, Vaniyambadi.

For Petitioner : Mr.L.Sweety for
Mr.M.Nallathambi
For Respondent : Mr.J.Saravanel

ORDER

The defendant who failed to convince the trial Court to condone the delay of 3911 days in filing the petition to set aside the *ex-parte* decree dated 22.11.2005 passed in O.S.No.100 of 2003 on the file of learned District Munsif cum Judicial Magistrate, Vaniyambadi, Vellore District, is the petitioner before this Court.



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2. The respondent filed O.S.No.100 of 2003 on the file of learned

District Munsif cum Judicial Magistrate, Vaniyambadi. In the said suit, the relief that was sought for is to declare the respondent/plaintiff is the Secretary of the M.J.M. and Thiru.Vee.Ka.Middle School Educational Committee, Vaniyambadi. He also sought for an interim injunction restraining the petitioner/defendant from interfering with the peaceful possession and enjoyment of the post.

3. In the said suit, notice was taken to the following address:- Mr.J.S.T Nallappa, No.19, O.C.F Road, Avadi, Chennai. The said notice was returned with an endorsement as “Left”. On the basis of this endorsement, paper publication was taken in Dinamalar daily to the same address.

4. Petitioner in order to stake a claim to his rights filed W.P.No.8196 of 2004. In the said Writ Petition, he gave his address as No.12, M.T.H, Road, New Selvam Store, Avadi, Chennai – 600 005. Writ Petition came up for disposal. The Writ Petition was finally disposed of stating that subject to the outcome of the civil proceedings, the Writ Petition may be closed.



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5.The notice had been returned “Left” and the paper publication had been taken. The suit was decreed *ex-parte*. The *ex-parte* decree reads as follows:-

நீரூபண பிரமானப்பத்திரம் தாக்கல் செய்யப்பட்டது. வா.சா.1 விசாரிக்கப்பட்டார். வா.சா.ஆ.1 முதல் 5 வரையான ஆவணங்கள் குறியீடு செய்யப்பட்டன. கோருரிமை மெய்ப்பிக்கப்பட்டது. வாதி தாவாவில் கோரியுள்ளபடி செலவுத்தொகையுடன் இந்த வழக்குதீர்ப்பிடப்படுகிறது.

6.On coming to know the decree passed, an application was filed by the petitioner/defendant to set aside the *ex-parte* decree in I.A.No.579 of 2016. In the said I.A., the reason that was given by the learned counsel for the petitioner was that notice was never served on the petitioner and he had given a new address namely, No.2, Ashok Niranjana Nagar, Ayyankulam, Paruthipattu, Avadi, Chennai – 7. The number of days delayed is around 3911. It was strongly opposed by the respondent and the application came to be dismissed, against which the present Revision.

7.I have heard Ms.L.Sweety, the learned counsel for the petitioner and Mr.J.Saravanel, the learned counsel for respondent.



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8.Ms.L.Sweety, the learned counsel for the petitioner submits that:-

i)as the summons had not been served on the petitioner, the number of days delayed should not be taken into consideration.

ii)She would point out from the writ affidavit that as early as 2004, she had given the correct address in affidavit, which was not the address to which summons were taken in the suit.

iii)She pointed out from the *ex-parte* decree that by applying the judgment in ***R.Stella Vs. V.Antony Francis C.R.P.(NPD)(MD)Nos.1303 of 2012 and 871 of 2013*** dated 22.10.2019, the judgment being a non-speaking decree, the same is *exfacie* illegal.

9.Mr.J.Saravanel, the learned counsel would refer to the acknowledgement card dated 08.11.2001 and would say that the address to which the summons have sent was the correct address as the petitioner himself acknowledge the same and it had been filed before the Court below as Ex.R1. He would then submit that he is not responsible for the Court passing the judgment in a wrong manner and therefore, the delay need not be condoned. He would further add that the idea of the



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petitioner is only to alienate the school and its properties. He states the school is doing a lot of charitable work for the poor and needy children in the area and therefore, no discretionary order should be granted in favour of the petitioner.

10.I have carefully heard either side and perused the records.

11.The first reason for condoning the delay is that notice was never served on the petitioner either through Court or privately or through publication. I come to this conclusion because, the address that was given in the plaint is the former address of the petitioner/defendant. Petitioner/defendant had given his present address in the Writ Petition which was to the knowledge of the respondent/plaintiff as the latter had entered appearance by a counsel. Still the summons was taken to the old address and an *ex parte* decree was obtained. On coming to know the present address, action should have been taken to take notice to the appropriate address.

12. Mr.Saravanel, the learned counsel would state that Ex.R1 shows the address, which plaintiff had received notice in 2001. The suit is



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of the year 2003 and the acknowledgement which has been filed by the learned counsel for the petitioner at page No.27 of the typed set would show that it was not served. When service is not complete, the Court resorts to publication only for the purpose of disposal of the suit. Paper publication only raises a presumption of service of notice. It is not conclusive proof of service of summons. Therefore, I have to conclude that no notice was served on the petitioner in the suit and he came to know about the decree only when it was disclosed in the counter in the Writ Petition.

13.The second reason I would state for condoning the delay is a perusal of the judgment shows that there is absolutely no discussion on the merits of the claim of the respondent/plaintiff and as to how the respondent/plaintiff proved his case. I agree with Mr.J.Saravanel that it was a practise of the subordinate Courts to pass a non-speaking decree as declared by this Court in ***R.Stella Vs. V.Antony Francis C.R.P.(NPD)(MD)Nos.1303 of 2012 and 871 of 2013*** dated 22.10.2019. Such kind of practise is not only prohibited by the Civil procedure but also several precedents of the Supreme Court and this Court.



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WEB COPY 14. Knowing the party had not been served with notice and the decree being contrary to law are the two situations, which constrain me to condone the delay.

15. Having said that, I am of the view that the petitioner ought to have taken steps immediately. On account of the fact that nearly 3911 days has occasioned, respondent/plaintiff has been put to loss and prejudice. Taking note of the situation, I am inclined to impose heavy cost of Rs.1,00,000/- on the petitioner. Cost of Rs.1,00,000/- to be paid within eight weeks from today.

16. On payment of aforesaid amount as costs, I.A.No.579 of 2016 will stand allowed.

17. The learned District Munsif Cum Judicial Magistrate, Vaniyambadi, is requested to take up the application under Order 9 Rule 13 and allow the application.



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WEB COPY 18.The petitioner/defendant shall file written statement on or before 31.10.2023 and the suit itself shall be disposed of on or before 30.10.2024.

19.In case, the civil revision petitioner does not pay the costs or fails to file the written statement within the time granted, this Civil Revision Petition stands dismissed.

20.Accordingly, this Civil Revision Petition is disposed of with costs.

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Index:Yes/No

Speaking Order: Yes/No



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To

1.The District Munsif, Vaniyambadi.

2.The Section Officer,
VR Section,
High Court of Madras.



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V.LAKSHMINARAYANAN.J,

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