



WEB COPY

C.R.P.Nos.2306 and 2307 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.Nos.2306 and 2307 of 2016
and
C.M.P.Nos.11908 and 19198 of 2016**

C.R.P.Nos.2306 of 2016

P.I.Sathyanesan

... Petitioner

Vs.

1. Aarti R.Nair

2. Rajeev Gopal

3. Esakkimuthu

... Respondents

Prayer in C.R.P.No.2306 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.14880 of 2014 in O.S.No.8451 of 2010 dated 02.07.2016 on the file of IV Additional City Civil Court, Chennai.

C.R.P.Nos.2307 of 2016

P.I.Sathyanesan

... Petitioner

Vs.

1/10



WEB COPY

1. Aarti R.Nair

2. Rajeev Gopal

3. Esakkimuthu

... Respondents

Prayer in C.R.P.No.2307 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order in I.A.No.14881 of 2014 in O.S.No.8451 of 2010 dated 02.07.2016 on the file of IV Additional City Civil Court, Chennai.

For Petitioner : Mr.P.Gunaraj

For Respondents : Mrs.T.Jayalakshmi
for M/s.Paul and Paul (for R1)

No appearance (for R2 and R3)

COMMON ORDER

C.R.P.No.2306 of 2016 has been filed against the fair and decreetal order dated 02.07.2016 made in I.A.No.14880 of 2014 in O.S.No.8451 of 2010 on the file of IV Additional City Civil Court, Chennai, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.



WEB COPY

C.R.P.Nos.2306 and 2307 of 20 --



2. C.R.P.No.2307 of 2016 has been filed against the fair and decreetal order dated 02.07.2016 made in I.A.No.14881 of 2014 in O.S.No.8451 of 2010 on the file of IV Additional City Civil Court, Chennai, thereby dismissing the petition to revoke the vakalat of the counsel who entered appearance on behalf of the petitioner before the trial Court.

3. The petitioner is the second defendant in the suit filed by the first respondent herein. The first respondent/plaintiff filed a suit for declaration declaring that the sale deed dated 21.01.2009 executed by the second respondent herein in favour of the petitioner herein and third respondent herein on the file of the Joint Sub Registrar, vide Document No.189/2009 is null and void and for damages.

4. The case of the first respondent herein/plaintiff is that she got married with the second respondent on 05.12.2003. After their marriage, she purchased the suit property in which both were living there. The said flat was purchased by the first respondent herein with loan availed from LIC



WEB COPY

Housing Finance Ltd., under the loan Account No.3038214. In fact all the original parent deeds were deposited with the LIC Housing Finance Ltd., while availing the loan. Thereafter, there was misunderstanding between the first and second respondents herein with regards his contact. Therefore, the first respondent filed a petition for divorce in O.P.No.2599 of 2008 on the file of I Additional Family Court, Chennai. While that being so, the second respondent herein fabricated the Power of Attorney as if the first respondent herein executed in his favour dated 24.10.2008, registered vide document No.1535. On the strength of the Power Attorney, the second respondent herein, sold out the suit property in favour of the petitioner herein. Therefore, the first respondent also lodged a complaint and the same has been registered in F.I.R No.141 of 2009 on the file of the Inspector of Police, R5, Virugambakkam Police Station, Chennai. Hence, she filed a suit for declaration before this Court.

5. On receipt of the suit summons, the petitioner and the second respondent engaged counsel on their behalf. Thereafter, the main suit itself was transferred to the file of IV Additional City Civil Court, Chennai due to pecuniary jurisdiction. After receipt of notice from the trial Court, upon



transfer, the petitioner engaged an Advocate to defend the suit. However, he did not appear before the trial Court and as such, the petitioner was set ex-parte and the ex-parte decree was passed on 01.07.2011 for non filing of his written statement.

6. On the strength of the decree obtained by the first respondent, she caused a legal notice to the petitioner on 19.08.2014, thereby called upon the petitioner to deliver the possession of the suit schedule property forthwith in pursuant to the judgement passed in O.S.No.8451 of 2010 dated 01.07.2011. Only on receipt of the said notice, the petitioner came to knowledge about the ex-parte decree passed in the suit. Subsequently, the third respondent relinquished his rights in favour of the petitioner herein. Therefore, immediately he filed a petition to set aside the ex-parte decree and to revoke the vakalat of the Advocate, who was originally engaged by the petitioner on his behalf before the trial Court. Both the applications were dismissed by the trial Court for the reason that the petitioner failed to produce any document to show that he received a notice dated 04.08.2014 and only thereafter, he came to knowledge about the ex-parte decree dated 01.07.2011. Further, the delay is very huge and the petitioner failed to



explain each and every day in the manner known to law to set aside the ex-parte decree. Further, the petitioner also failed to lodge any complaint as against the counsel, who was engaged by him, to appear on his behalf, before the trial Court, for his non appearance before the trial Court.

7. The learned counsel for the petitioner relied upon the judgement reported in (1998) 7 SCC 123 (*N.Balakrishnan -vs- M.Krishnamurthy*) in which the Hon'ble Supreme Court of India held that the condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act, 1963 does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.



WEB COPY



8. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials placed on record.

9. In the case on hand, the petitioner contended that the Advocate, who was engaged by him, failed to appear before the trial Court and he also failed to inform about the ex-parte decree passed against him. Further, only on receipt of notice dated 04.08.2014 from the first respondent, he came to know the ex-parte decree passed against him. On a perusal of the notice dated 04.08.2014, it reveals that the first respondent caused the said notice through counsel thereby called upon the petitioner herein to deliver possession of the suit property on the strength of the decree dated 01.07.2011 passed in O.S.No.8451 of 2010 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai. Therefore, the reasons stated in the affidavit filed in support of the condone delay petition does not smack malafides or it is not put forth as part of a dilatory strategy. That apart, the dispute is between the first and second respondents herein, who are the husband and wife.



WEB COPY

10. According to the first respondent/plaintiff, the second respondent forged her signature and fabricated the power of attorney. On the strength of the said fabricated power of attorney, the power agent had executed the sale deed in favour of the petitioner herein. The petitioner is a bonafide purchaser and he has nothing to do with the power of attorney, which was alleged to be forged by the second respondent herein. Therefore, the petitioner may be given one more opportunity to defend the suit on merits and in accordance with law on payment of some costs in order to compensate the prejudice caused to the first respondent herein.

11. Accordingly, these Civil Revision Petitions are allowed and the fair and decreetal orders in I.A.No.14880 and 14881 of 2014 in O.S.No.8451 of 2010 dated 02.07.2016 on the file of IV Additional City Civil Court, Chennai are set aside on condition that the petitioner shall pay a sum of Rs.10,000/- as cost to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment of cost, the Court below is directed to set aside the ex-parte decree and dispose



C.R.P.Nos.2306 and 2307 of 20 --

of the main suit within a period of six months from the date of setting aside the ex-parte decree. However, the petitioner is at liberty to engage new counsel on record. Consequently, the connected Miscellaneous Petitions are closed.

31.01.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
kv

To

1. The IV Additional City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.R.P.Nos.2306 and 2307 of 20 --

G.K.ILANTHIRAIYAN,J.

Kv

C.R.P.Nos.2306 and 2307 of 2016

31.01.2023