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CRP.No. 1451 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1451 of 2021

and

CMP.No.11342 of 2021

C. Rajendran

.. Petitioner

Versus

C. Revathy

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays, to set aside the fair and decretal order dated 19.02.2021 passed in I.A.No. 01 of 2019 in O.S.No. 350 of 2018 on the file of III Additional District Judge, Coimbatore.

For Petitioner : Mr.P. Mahesh Kumar

For Respondent : Mr.S. Mohan

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 19.02.2021 passed in I.A.No. 01 of 2019 in



CRP.No. 1451 of 2021

O.S.No.350 of 2018 on the file of III Additional District Judge,
Coimbatore.

2. The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the original suit.

3. The case of the respondent/plaintiff is that she has filed a suit in O.S.No.350 of 2018 before the III Additional District Court, Coimbatore, for the relief of specific performance of the agreement to sale dated 13.10.2008 between the plaintiff and the defendant, directing the defendant to receive the balance sale consideration of Rs.10,00,000/- from the plaintiff and to execute a sale deed in respect of the suit property in favour of the plaintiff. The case was posted for filing written statement on 21.06.2019 and the same was not filed by the defendant and he was called absent and set ex-parte. In the meanwhile, the revision petitioner/defendant has filed I.A.No. 1 of 2019 under Order 9 Rule 7 of CPC., seeking to set aside the ex-parte decree passed on 21.06.2019 against the revision petitioner/defendant. After perusing the records, the trial Court dismissed the application by order dated 19.02.2021.



CRP.No. 1451 of 2021

Challenging the same, the present civil revision petition is filed.

WEB COPY

4. According to the revision petitioner/defendant, the plaintiff has filed the suit for specific performance. However, the case was posted for filing written statement on 21.06.2019. Since the written statement has not been filed by the defendant, he was called absent and set ex-parte and ex-parte decree was passed on 24.02.2021. The defendant met with road accident and he was hospitalized. Therefore, he was not able to contact his counsel and thereby he did not know that the case was posted for filing written statement and he did not give any instruction to his counsel. Therefore, the defendant prays one more opportunity to be granted to defend his case. Hence, the revision petitioner/defendant prays to set aside the findings of the trial Court and allow the above Revision.

5. According to the respondent/plaintiff, several opportunities were granted to the defendant for filing written statement, but he purposely did not file the written statement in order to protract the suit proceedings. It is not true that the defendant met with road accident and



CRP.No. 1451 of 2021

was hospitalized and hence, was not able to contact his counsel, thereby he did not know that the case was posted for filing written statement and he did not give any instruction to his counsel. If really an accident had happened to him, he would have furnished medical certificates and therefore, the above reasons assigned by the revision petitioner/defendant are all false. Knowing fully well that several opportunities were given to him for filing written statement, wantonly and deliberately the revision petitioner/defendant has not appeared in Court and has not filed written statement. Under such circumstances, the mere fact that the revision petitioner/defendant has filed his written statement now along with the application, is not a reason or ground to set aside the order of the trial Court. There is no reason/cause to set aside the ex-parte decree passed on 21.06.2019 against the revision petitioner/defendant. Therefore, the above Civil Revision Petition has to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the suit was filed by the respondent/plaintiff for specific performance, directing the defendant



CRP.No. 1451 of 2021

to receive the balance sale consideration from the plaintiff and to execute a sale deed in favour of her.

8. The contention of the revision petitioner/defendant is that the defendant had met with an accident and therefore, he was not able to contact his counsel and give instruction for filing written statement and hence, he was set ex-parte and the defendant has shown good cause for his previous non appearance, the ex-parte decree dated 21.06.2019 may be set aside and the defendant has got good defence in the suit and in the interest of justice, the revision has to be allowed.

9. On the other hand, the contention of the respondent/plaintiff is that the defendant did not produce any medical certificates/any other documents to show that he met with an accident and was hospitalized and hence, he was not able to file written statement and hence, the above reasons stated for his non appearance are false.

10. On a perusal of the impugned order dated 19.02.2021, it is seen that the application was filed on the date on which the suit was posted for



CRP.No. 1451 of 2021

pronouncing judgment and therefore, as per Order 9 Rule 7 of CPC., the application is not maintainable and the application can be entertained only if the suit is posted for further hearing and this Court cannot entertain the same. as it is not maintainable. The suit is filed for specific performance of sale agreement dated 13.10.2008. In the suit, summons were served on the defendant and he entered appearance through his Advocate on 07.08.2018 and the case was posted for filing written statement on 11.09.2018. From 11.09.2018, the case was adjourned several times for filing written statement of the defendant till 21.06.2019. On 21.06.2019, the defendant was called absent and there was no representation on behalf of the defendant and for non filing of written statement, he was called absent and set ex-parte and the case was posted for recording ex-parte evidence on 01.07.2019. Further, the case was adjourned from 01.07.2019 to 01.08.2019 and 22.08.2019 to 12.09.2019 finally. On 12.09.2019, the evidence of PW1 was recorded and the plaintiff's side evidence was closed and the case was posted "for arguments" on 13.09.2019 and therefore, the plaintiff has filed her written arguments and when the case was posted "for judgment" on 09.12.2019, the defendant has filed the application. Hence, the



CRP.No. 1451 of 2021

WEB COPY

contention of the respondent/plaintiff is that the application filed under Order 9 Rule 7 of CPC on the day of judgment is not maintainable.

11. The learned counsel for the respondent/plaintiff has relied upon the decision in the case of **Arjun Singh v. Mohindra Kumar and others** reported in **CDJ 1963 SC 136**, wherein the Apex Court has held that in a suit in which the defendant was set ex-parte and evidence of plaintiff was also recorded and after hearing the plaintiff's side, when the case was posted "for judgment" on the date of judgment, the question of "further hearing" as per Order 9 Rule 7 CPC., would not arise and only after setting the defendant ex-parte, if the case is posted for further hearing, then alone an application under Order 9 Rule 7 CPC., could be filed. The words of the Apex Court are;

"...O.IX R.7, the opening words of that rule are, as already seen, "where the Court has adjourned the hearing of the suit exparte". Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the "hearing" of the suit has been completed and the Court being competent to pronounce the judgment then and



CRP.No. 1451 of 2021

there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX Rule 1 CPC., there is clearly no adjournment of "the hearing" of the suit, for, there is nothing more to be heard in the suit....."

12. From the above judgment of the Apex Court it is very clear that, after passing of ex-parte decree if the suit is in the "next hearing stage", then alone the defendant can invoke Order 9 Rule 7 CPC. If, after setting the defendant ex-parte, the Court has completed the hearing and reserved the matter "for judgment", then the defendant cannot invoke Order 9 Rule 7 of CPC and he has to seek remedy only under Order 9 Rule 13 CPC, if an ex-parte decree is passed. It is very clear that, after setting the defendant ex-parte, if hearing is completed and if the Court has posted the case "for judgment", the same is only for convenience of the Court and the defendant cannot take advantage of it, as there remains nothing to be heard and therefore, Order 9 Rule 7 of CPC cannot be pressed into service at this stage. Under these circumstances, this Court is of the view that the facts and circumstances of the case narrated earlier shows that the application under Order 9 Rule 7 of CPC filed on the day of pronouncement of the judgment is not sustainable. Therefore, the trial



CRP.No. 1451 of 2021

WEB COPY

Court has rightly appreciated the facts and had come to the conclusion by dismissing the application. There is no perversity in the impugned order passed by the trial Court.

13. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.02.2023

Index : Yes/No

Speaking order: Yes/No.

Neutral Citation : Yes/No

msm

To

1. The III Additional District Judge, Coimbatore.
2. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



CRP.No. 1451 of 2021

V.BHAVANI SUBBAROYAN, J.

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CRP.No. 1451 of 2021

03.02.2023