



C.R.P.No. 1350 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1350 of 2023

and

C.M.P.No.9084 of 2023

Fiaz Ahmed

.. Petitioner

Vs

P.Venkatesan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal order dated 07.02.2023 in I.A.No.141 of 2019 in O.S.No.216 of 2017 on the file of the District Munsif, Chengalpet.

For Petitioner : Mrs.A.L.Gandhimathi, Senior Counsel
for Mr.L.Palanimuthu
For Respondent : Mr.U.Gowri Shankar

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.141 of 2019 in O.S.No.216 of 2017 on the file of District Munsif, Chengalpet.



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2. The plaintiff / petitioner herein in O.S.No.216 of 2017 has

preferred this revision.

3. The revision petitioner herein is the plaintiff who filed the suit for permanent injunction against the defendant / respondents herein. In the suit, summon was issued to the defendant / respondent herein, as it was returned as “No such person”. Thereafter, substituted service was effected through paper publication. In spite of the service of the suit summon, the defendant failed to appear before the Court. Therefore, the defendant / respondent herein set ex parte and the ex parte decree was passed in favour of plaintiff / petitioner herein on 20.12.2017. Thereafter, the defendant came to know about the ex parte decree when he attend the DRO enquiry in respect of patta cancellation proceeding where the plaintiff / petitioner herein mentioned that he obtained ex parte decree in the said suit. Immediately, the defendant / respondent herein has taken steps to set aside the ex parte decree but there was a delay of 266 days. Hence, he filed an application to condone the delay in I.A.No.141 of 2019. That application was strongly objected by the plaintiff / petitioner herein stating that proper



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notice was served to the address given in the sale deed and other proceeding but the notice was returned as “No such person”. Thereafter, paper publication was effected and finally the defendant / respondent herein was called absent and passed ex parte decree by the trial Judge based on the available documents. Now to drag on the proceedings, having following the suit proceedings, now the defendant has come forward with the application, as such is not acceptable and the reason for the delay also not been properly explained.

4. Considering both submissions, the trial Judge held that the suit was filed by the plaintiff on 31.07.2017 and decreed against the defendant within five months on 20.12.2017 and the summon was served to the defendant was returned as “No such person”. Thereafter, substituted service was ordered by effecting paper publication against the defendant, he was called absent and set exparte. It is also stated that there is no Tom Tom procedure followed in this case as contended by the plaintiff. There is lot of litigation pending between the parties and one such is that writ petition filed by the plaintiff / petitioner herein against the defendant / respondent herein



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in that, address is mentioned as Kellys Road, Vellore District but in the present suit, the address of the defendant / respondent herein is mentioned as Seven Wells, Chennai. Therefore, the old address belongs to the defendant as well as new address belongs the defendant is well known to the plaintiff / petitioner herein. Considering that, unilaterally the suit was decreed but it is presumed that there is no valid service on the defendant / respondent herein. Accordingly, to give one more chance, the trial Judge allowed the petition by condoning the delay. Challenging the said finding, the revision petition is filed.

5. The learned counsel for the petitioner submits that the trial Judge failed to take note of the fact that the summon was served to the address which was mentioned by the defendant / respondent herein in the sale deed and other documents belongs to him and after due paper publication, he was properly set ex parte. There is no laches on the part of the plaintiff / petitioner herein besides no proper reason was assigned by the defendant to condone the delay inspite of that the application was allowed, as such is liable to be set aside.



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6. The learned counsel for the respondent submits that he is residing at new address, Kellys Road, Vellore but the summon was served to the old address. The trial Judge also observed while passing the order stating that in the writ petition filed by the plaintiff / petitioner herein, the address of the defendant was mentioned as Kellys Road, Vellore District, this fact is not being denied by the plaintiff.

7. Admittedly, the plaintiff was aware of the new address of the defendant but notice was sent to the old address. Therefore, the reason assigned by the trial judge is well reasoned, which needs no interference.

8. In the result, the Civil Revision Petition is dismissed as no merits. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2023

Index :Yes/No
Neutral Citation :Yes/No
AT

To
The District Munsif Court, Chengalpet.

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T.V.THAMILSELVI, J.

AT

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