



C.R.P.No.3926 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2023

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.3926 of 2022

and

C.M.P.No.20510 of 2022

P.V.Lakshmi

...Petitioner

Vs.

Kalpana

...Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India to set aside the Fair and Final Order dated 03.09.2022 made in E.A.No.2 of 2022 in E.P.No.121 of 2018 in O.S.No.1029 of 2013 on the file of the Court of learned II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.G.Ethirajulu

For Respondent : Mr.M.Guruprasad



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ORDER

WEB COPY This Civil Revision Petition had been filed seeking to set aside the Fair and Final Order dated 03.09.2022 made in E.A.No.2 of 2022 in E.P.No.121 of 2018 in O.S.No.1029 of 2013 on the file of the Court of learned II Additional Sub Judge, Coimbatore.

2. Learned Counsel for the Petitioner submits that the Petitioner is the Defendant/Judgment Debtor in E.P.No.121 of 2018 in O.S.No.1029 of 2013. The suit was instituted by the Respondent herein for the relief of specific performance of contract for sale. After Exchange of notices between the Respondent as Plaintiff and the Petitioner herein as Defendant. The suit was instituted by the Respondent after receipt of summons. The Petitioner herein as Defendant had engaged counsel and his Counsel filed vakalat in O.S.No.1029 of 2013. Subsequently, he did not file written statement within the specified time, therefore, the Petitioner herein was set *ex-parte*.



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3. On 14.08.2010 the sale agreement was executed as per the recitals/averments in the plaint and paid a sum of Rs.2,50,000/- and time of nine (9) months was fixed for execution of sale deed. But on 05.07.2011 it is stated that the Defendant had received Rs.10,000/- and made an endorsement on the sale agreement deed. Again on 15.07.2011, further amount of Rs.10,000/- was paid. The Plaintiff in O.S.No.1029 of 2013 claimed that balance amount of Rs.18,000/- is only to be paid. The suit was instituted on 12.07.2013. On receipt of summons from the court, the Petitioner herein had engaged a Counsel and the Counsel had not filed any written statement within a specified time, therefore, the Petitioner herein as Defendant in O.S.No.1029 of 2013 was set *ex-parte* and *ex-parte* decree was passed on 01.09.2014. Subsequently the Respondent as Decree-holder filed in E.P.No.585 of 2016 before the learned Second Additional Sub-Judge, Coimbatore. The Petitioner and Respondent in C.R.P.No.3926 of 2022 had entered appearance only then the Petitioner came to know about the *ex-parte* decree and there was a compromise between the Petitioner and Respondent. Based on which the Respondent has not pressed E.P.No.585 of 2016. Subsequently the Respondent had filed E.P.No.121 of 2018 in which



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also, notice was served on the Petitioner herein. Therefore, the Petitioner filed I.A.No.1/2020 in O.S.No.1029 of 2013 for condonation of delay of 1977 days along with a Petition to set aside the *ex-parte* decree. Also the Petitioner filed E.A.No.2 of 2022 seeking stay of all further proceedings in E.P.No.121 of 2018.

4. In I.A.No.1 of 2020 in O.S.No.1029 of 2013, the Petitioner had let in evidence and she was cross-examined on behalf of the Respondent/Plaintiff. Subsequently, the case was posted for Respondent evidence and till date I.A.No.1 of 2020 in O.S.No.1029 of 2013 had not been disposed of. While so, the learned II Additional Sub Judge, Coimbatore, had dismissed the E.A.No.2 of 2022 filed by the Petitioner herein seeking stay of the cross-examination of proceedings in E.P.No.121 of 2018. Aggrieved by the same, the Petitioner in E.A.No.2 of 2022 had approached this court by way of this Civil Revision Petition seeking to set aside the order of dismissal of stay application in E.A.No.2 of 2022.

5. Learned Counsel for the Revision Petitioner submits that the



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Petitioner is married and working as a Sweeper in the Indian Railways and for her family expenses she borrowed some money. Since the Petitioner is an illiterate woman, the Respondent had obtained her signatures on a blank paper and filled it up as though she had executed the sale agreement deed. She has valuable defence that since her Counsel had not performed his professional duties, the Petitioner has to be granted an opportunity to contest the suit in O.S.No.1029 of 2013.

6. Till date I.A.No.1 of 2020 filed by the Petitioner herein to condone the delay in filing petition to set aside the *ex-parte* decree had not been disposed by the learned Trial Judge in O.S.No.1029 of 2013. While so the order dismissing the E.A.No.2 of 2022 also cause prejudice to the Petitioner herein. It is the further submission of the learned Counsel for the Petitioner that E.P.No.121 of 2018 is reserved for orders. Therefore, there was urgency in filing this Civil Revision Petition.

7. The learned Counsel for the Respondent vehemently objected the arguments of the learned Counsel for the Petitioner stating that the



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Respondent was set *ex-parte*. The learned Counsel also invited attention of this Court to the petition filed by the Petitioner in I.A.No.1 of 2020 in O.S.No.1029 of 2013. It is the further submission that in the Cross-examination, she had admitted that she was employed as Sweeper in the Indian Railways and she had been attending her regular duty all these years and also she was contacting her Counsel. Therefore, the submission of the learned Counsel for the Petitioner that being an illiterate woman she could not defend her suit and her ignorance was exploited in execution of a sale agreement as she had borrowed loan, cannot be accepted. Even in the earlier Execution Petition, she had approached the decree holder and sought compromise but she had not acted as per her words. Therefore, the Respondent had proceeded with second Execution Petition in E.P.No.121 of 2018. Therefore, there is no merit in this Civil Revision Petition and it has to be dismissed.

8. In support of his contention, the learned Counsel for the Respondent/Decree-holder relied on the ruling of this Court in **2012 (3) MWN (Civil) 66 [K.Lakshmiammal -vs- D.S.Nagalakshmi]** wherein this



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Court has held as follows:-

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“ Code of Civil Procedure, 1908 (5 of 1908), Order 21 & Rule 26 – Stay of Execution Decree- Reasonable time – Power vested with Executing Court for stay of Execution Proceedings for a reasonable time in order to enable judgment-debtor to approach appropriate form – However, if after filing of Application under Order 21, Rule 26, no Application is made by judgment-debtor to appropriate Court, Executing Court not entitled to prolong stay indefinitely - Relief under provision contemplated only for a reasonable time – Petitioner, who had obtained interim stay under Order 21, Rule 25 during vacation time, and failed to approach appropriate forum thereafter, not fulfilling mandatory requirement of provision and not entitled to seek protection under provision.”

9. Considering the rival submissions, since the I.A.No.1/2020 is still pending, the dismissal of E.A.No.2/2022 is found unreasonable and unacceptable in the facts and circumstance of this case. The reliance placed on the reported ruling of this Court by the learned Counsel for the Respondent/Decree-Holder in **2012 (3) MWN (Civil) 66 [K.Lakshmiammal -Vs- D.S. Nagalakshmi]** will not help the Respondent/Decree Holder in this case seeking dismissal of this Civil Revision Petition. In the reported ruling relied by the Respondent/Decree Holder stay granted by the Execution Court under O-XXI, R-26 C.P.C was kept pending. The Judgment Debtor had not approached the Court of the Original Jurisdiction to set aside the ex



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parte Decree and agitated his valuable defence during the period of stay granted by the Execution Court. Therefore, this Court, in the reported ruling had held that the stay granted by the Execution Court under O-XXI, R-26 CPC cannot be kept pending. It is granted only for a specified time. Here, in this case, earlier to the filing of E.A.No.2 of 2022 by the Judgment Debtor as Defendant in O.S.No.1029 of 2013 had filed I.A.No.1/2020 in O.S.No.1029 of 2013 before the learned Principal Sub Judge, Coimbatore. Therefore, the stay in E.A.No.2 of 2022 is justified till the disposal of I.A.No.1 of 2020 whereas E.A.No.2 of 2022 was dismissed. Therefore, the Defendant/Judgment Debtor in E.P.No.121 of 2018 in O.S.No.1029 of 2013 had filed this Civil Revision Petition.

10. The Petition in I.A.No.1 of 2020 in O.S.No.1029 of 2013 is still pending enquiry. While so, the dismissal of E.A.No.2 of 2022 in E.P.No.121 of 2018 by the learned II Additional Sub Judge, Coimbatore is unwarranted. It has resulted in miscarriage of justice warranting interference by this Court under Article 227 of Constitution of India. Therefore, the argument of the learned Counsel for the Respondent/Decree



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Holder placing reliance on the reported ruling of this Court is rejected.

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11. In the result, this Civil Revision Petition is allowed. The order dated 03.09.2022 in E.A.No.2/2022 in E.P.No.121 of 2018 in O.S.No.1029 of 2013 passed by the learned II Additional Sub Judge, Coimbatore, is set aside. The learned II Additional Sub Judge, Coimbatore, is directed to pass appropriate orders only after orders passed in I.A.No.1/2020 in O.S.No.1029 of 2013 by the learned Principal Sub Judge, Coimbatore. No costs. Consequently, the connected miscellaneous petition is closed.

12. After pronouncing the order in the open court, the learned Counsel appearing for the Respondent/Decree-holder submitted that E.P.No.121 of 2018 is pending before the Court of the learned II Additional Sub Judge, Coimbatore and I.A.No.1 of 2020 in O.S.No.1029 of 2013 is pending on the file of the learned Principal Sub Judge, Coimbatore. Therefore, the order of this Court that E.P.No.121 of 2018 shall not be disposed till the I.A.No.1 of 2020 in O.S.No.1029 of 2013 will cause delay. It is better that both E.P.No.121 of 2018 and I.A.No.1 of 2020 in O.S.No.1029 of 2013 shall be clubbed and posted in any one of the Court.



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Therefore, the learned Counsel for the Respondent/Decree-holder sought transfer of E.P.No.121 of 2018 from the file of the learned II Additional Sub Judge, Coimbatore to the Court of the learned Principal Sub Judge, Coimbatore or in the alternative, to withdraw the suit in O.S.No.1029 of 2013 from the file of the learned Principal Sub Judge, Coimbatore, along with the pending I.A.No.1 of 2020 and transfer the same to the file of the learned II Additional Sub Judge, Coimbatore.

13.The request of the learned Counsel for the Respondent/Decree-holder is found reasonable while considering the stakes involved in the dispute. I.A.No.1 of 2020 is filed by the Defendant in O.S.No.1029 of 2013 to set aside the ex parte decree along with petition to condone the delay of 1097 days. E.P.No.121 of 2018 is filed based on the ex parte decree obtained by the Respondent in this Civil Revision Petition who is the Plaintiff/Decree-holder in O.S.No.1029 of 2013. Therefore, the learned Principal District Judge, Coimbatore is requested to consider either to withdraw E.P.No.121 of 2018 from the Court of the learned II Additional Sub Judge, Coimbatore or in the alternative to withdraw the suit in



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O.S.No.1029 of 2013 pending for disposal of I.A.No.1 of 2020 from the file of the learned Principal Sub Judge, Coimbatore and transfer the same to the Court of the learned II Additional Sub Judge, Coimbatore and to pass appropriate orders so that both the proceedings will be pending before the same Judge. So that the same Judge will be able to dispose of both the cases. The learned Principal District Judge, Coimbatore, shall pass appropriate orders as per Section 24 of Civil Procedure Code based on the direction of this Court.

15.02.2023

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Index : Yes / No

Internet : Yes / No

Note:- Registry is directed to issue order copy on 16.02.2023.



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SATHI KUMAR SUKUMARA KURUP., J.

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To

1. The Principal District Judge,
Coimbatore.
2. The II Additional Subordinate Judge,
Coimbatore.
3. The Principal Sub Judge,
Coimbatore.

Order made in
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