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C.R.P.Nos. 4852, 4853, 4856 and 4863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.Nos. 4852, 4853, 4856 and 4863 of 2023

and

C.M.P.Nos. 28739, 28740, 28759 and 4863 of 2023

C.R.P.Nos. 4852 & 4853 of 2023

S. Raja

.. Petitioner

Vs

B. Shantilal

.. Respondent

PRAYER: Civil Revision Petitions are filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order dated 12.09.2023 passed in I.A.Nos.4 & 2 of 2023 in O.S.No.58 of 2016 by the learned Additional Subordinate Judge, Chengalpattu.

For Petitioner : Mr. B. Arvind Srevatsa

C.R.P.Nos. 4856 & 4863 of 2023

Shanmugam

.. Petitioner

Vs

B. Shantilal

.. Respondent



C.R.P.Nos. 4852, 4853, 4856 and 4863 of 2023

PRAYER: Civil Revision Petitions are filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order dated 12.09.2023 passed in I.A.Nos.2 & 4 of 2023 in O.S.No.60 of 2016 by the learned Additional Subordinate Judge, Chengalpattu.

For Petitioners : Mr. B. Arvind Srevatsa

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed in I.A.Nos. 2 and 4 of 2023 respectively in O.S.Nos.58 & 60 of 2016 respectively, the defendants have preferred these revisions.

2. Before the trial Court, the defendants / petitioners herein filed an applications praying to set aside the ex parte decree passed and also to condone the delay of 884 days in filing application to set aside the ex parte decree. Both the applications were heard by the trial Judge by giving opportunity to the plaintiff and thereafter, dismissed the applications stating that proper reason was not assigned and also the petitioners are not entitled for the period of waiver during the Covid lock down period. Aggrieved by the said finding the defendants have preferred these revisions.

3. The learned counsel for the petitioners submitted that before



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the trial Court, though the petitioners appeared through counsel in the year 2016, the case was posed for written statement. On 31.07.2017 due to lack of communication, they were not filed written statement, so the petitioners remained set ex parte and the preliminary decree was passed on 30.08.2018. The said ex parte decree also not been informed so they were not aware of the passing of the ex parte decree. Thereafter they received notice in final decree proceeding and came to know the earlier ex parte decree but there was a delay of 1600 days but due to Covid pandemic period, those periods are ordered to be deducted as per the direction given by the Apex Court. Thereafter, 800 days delay has to be condoned. So they filed Section 5 application. But the trial Judge not accepted the defence taken by the revision petitioners stating that the ex parte decree was passed much earlier before the Covid pandemic. Therefore, the limitation period granted by the Apex Court not applicable to the present case and those period between 15.03.2020 till 28.02.2022 shall stand excluded only for the purpose of limitation for the suit or appeal, which could be expired during such period but the case in hand, the defendants were already set ex parte long back of the year 2017. Therefore, the said execution period given by the Apex Court



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will not apply to the defendants. But according to the defendants, they are the owner of the property having valid defence and already they repaid the amount and mortgage deed was not been acted upon, admittedly, it is the house property and if opportunity is not given to the defendants / petitioners herein, their valuable right to protect their property will be defeated.

4. It is an admitted fact that they remained ex parte in the year 2017 due to non filing of the written statement. But as per the contention of the revision petitioners that they were not been properly admitted in order to give fair opportunity and to prove their claim before the trial Court.

5. This Court is inclined to set aside the finding of the trial Judge by imposing cost of Rs.60,000/-. The petitioners are directed to deposit suit cost of Rs.60,000/- in O.S.Nos.58 & 60 of 2016, within four weeks from the date of receipt of copy of this order. In addition to cost of Rs.15,000/- is directed to pay to the plaintiff / respondent herein, within two weeks from the date of receipt of copy of this order. On such payment of the suit cost as well as the cost to the respondent herein, the trial Judge is directed to receive



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the written statement and proceed with the matter as per the manner known to law and dispose the case, within three months from the date of receipt of copy of this order.

6. Accordingly, the Civil Revision Petitions are allowed by setting aside the order passed by the trial Judge. No costs. Consequently, connected miscellaneous petitions are closed.

20.12.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The Additional Subordinate Judge, Chengalpattu.



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T.V.THAMILSELVI, J.

AT

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