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C.R.P.No.214 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.214 of 2023
and
C.M.P. No.1738 of 2023

K.Nagappan

... Petitioner

Vs.

B.P.Balaji

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 30.11.2022 made in I.A.No.1 of 2021 in O.S.No.650 of 2014, on the file of the II Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Loganathan
For Respondent : Mr.M.Sachinvijay

O R D E R

Challenging the order passed by the learned II Additional Judge, City Civil Court, Chennai, in I.A.No.1 of 2021 in O.S.No.650 of 2014, dated 30.11.2022, the petitioner is before this Court with the present Revision.



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2. Mr.R.Loganathan, the learned counsel appearing for the petitioner/plaintiff would submit that Application in I.A.No.1/2014 filed beyond time and that there is no petition filed seeking to condone the delay in filing petition under Order 9 Rule 13 C.P.C. Article 123 of Schedule of Limitation Act prescribes limitation of 30 days from the date of decree. In this case, the said decree was passed by the Court on 11.08.2014 in O.S.No.650 of 2014. The application in I.A.No.1/2014 filed on 4.9.2014, beyond the period of limitation, without any explanation for the delay. The suit for recovery of amount based on promissory note, supported by the guarantee of production of original Sale Deed, dated 20.09.2004-A3 along with the copy of the title deed omitted thereto viz. Exs.A1, A2, A4 and A5 and mainly Ex.A6 Promissory Note, dated 24.04.2012 and the Encumbrance Certificate Ex.A7. The demand notice issued on behalf of plaintiff and the copy of which is also available in the returned cover Ex.A8. All the averments contained in the plaint already averred under the notice and said letter sent through speed post with Acknowledgement, but the respondent managed to send back with postal endorsement "Refused" dated 3.12.2020. Thus, the respondent had knowledge of the proceedings and the claim made by the



C.R.P.No.214 2023

respondent that from the date of knowledge, the application under Order 9 Rule 13 C.P.C. filed in time cannot be accepted.

3. The learned counsel further submitted that the order dated 18.04.2012, the Encumbrance Certificate made to the property S.No.30/2, Plot No.14A, 14B, to an extent of 2666 sq.ft. in V.K.M.Nagar and after the order of the trial Court in I.A.No.1778 of 2014 in O.S.No.650 of 2014 and I.A.No.1777 of 2014 in O.S.No.650 of 2014, the attachment made on 5.7.2014 is recorded and the Interlocutory Application closed. Similarly, I.A.No.1777 of 2014 in O.S.No.650 of 2014 filed for injunction not to alienate the schedule mentioned property and the orders passed on 30.07.2014 in the above I.A. is also abiding the respondent. The learned counsel in support of his contentions, has relied on a Division Bench Judgment of this Court in ***St.Alfred Education Trust Vs. Kone Elevator India Pvt Ltd.***, reported in ***(2024 (2) CTC 386)***. Further, the learned counsel relied on the Judgment of the Hon'ble Apex Court in ***G.N.R.Babu Vs. B.C.Muthappa and Others*** reported in ***(2002 (5) CTC 474)***. The learned counsel, therefore, prayed for setting aside the order dated 30.11.2022 made in I.A.No.1 of 2021 in O.S.No.650 of 2014, on the file of the learned II Additional Judge, City Civil Court, Chennai.



C.R.P.No.214 2023

WEB COPY

4. Mr.M.Sachinvijay, the learned counsel appearing for the respondent/defendant would submit that the Suit for Recovery based on Ex.A6, Promissory Note, dated 24.04.2012, which mentions that the address as 29/23, Velavan Nagar, Kolathur, Chennai. Ex.A3, Sale Deed contains his address mentioning Door No.23, Velavan Nagar, Kolathur, Chennai. The petitioner is stranger to him and known through his uncle by name, Purushothaman Babu. In the year 2004, the relationship between the respondent and his uncle got strained and he moved out his uncle's house and residing separately. On 22.08.2019, he applied Encumbrance Certificate with respect to the suit schedule property for the purpose of securing patta and thereafter, he came to know that his property has been attached by the Court, vide order dated 05.07.2014, on the suit filed by the petitioner. The respondent not received any notices from the Court below. The petitioner manipulated the records, mislead it and obtained an *ex parte* decree. The respondent is totally unaware of the proceedings. The respondent's non-appearance before the trial Court is on account of non service of summons. The respondent to substantiate his contention that summons was not duly served on him, examined himself as P.W.1. Ex.P1 is the Encumbrance Certificate,



C.R.P.No.214 2023

dated 22.08.2019 and through which, he came to know that the property was attached by the Court in view of *ex-parte* order. Ex.P2 is the intimation letter sent by respondent to the Life Insurance Corporation of India, Mylapore, which shows that he changed his address from No.29/23, Velavan Nagar, Kolathur, Chennai—99 to No.6, Harbour Colony, Kolathur, Chennai-99. Similarly Ex.P3, LIC renewal Premium Receipts; Ex.P4, Gas Bill, Ex.P5, Voter's Identification Card, the address is mentioned as No.6, Harbour Colony, Kolathur, Chennai-99. Hence, the learned counsel prayed for dismissal of the Revision.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. On perusal of the records it is seen that the petitioner / plaintiff filed the Suit in O.S.No.650 of 2014, on the file of Principal Additional City Civil Court, Madras, for recovery of a sum of Rs.10,52,000/- along with interest at the rate of 18% per annum from the date of the plaint till the date of realization and also directing the respondent not to alienate the suit schedule property. Earlier, on 22.08.2019, when the respondent applied Encumbrance Certificate



C.R.P.No.214 2023

with respect to suit schedule property for the purpose of securing patta, he came to know that his property attached by the Court, vide order dated 05.07.2014, on the suit filed by the petitioner. The contention of the respondent is that he is not aware of the proceedings, since he has not received any notices from the Court below. The petitioner manipulated the records, mislead it and obtained an *ex parte* decree. Against the order of *ex parte* decree, the respondent filed an application in I.A.No.1/2021 in O.S.No.650 of 2014 before the learned II Additional Judge, II Additional City Civil Court, Chennai and the same was allowed. Aggrieved over the same, the petitioner is before this Court with this Revision.

7. In the context of rival submissions, the following points arise for determination in the instant proceedings:-

- a) Whether the petition under Order 9 Rule 13 is barred by limitation?
- b) Whether the respondent shows the sufficient cause for his absence in the original proceedings to seek the setting aside of the *ex-parte* decree?



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8. Article 123 to the Schedule of Limitation Act prescribes the period of limitation of 30 days for seeking setting aside the ex-parte decree. The time from which the period begins is the date of decree or where the summons or notices are not duly served, when the respondent had knowledge of the decree. While understanding the said Article under Limitation, there are two components. The first component is that the time starts from the date of decree. The second component is from the date of knowledge of the decree where the summons or notices are not duly served. The time from which the limitation begins to reckon as the date of knowledge arises only when there was no proper service of summons or notices. The petitioner examined himself as R.W.1 and during cross-examination he admitted that he knew the respondent through his uncle Plurushothaman that he is not aware as to what business the respondent was carrying on. It is his specific admission that he mentioned the address of Purushothaman as the address of the respondent and that regarding the borrowal of money, he did not give any call to the respondent and he gave call to the mobile number of Purushothaman only. It is further noted from the suit records, that in the legal notice issued by the petitioner to the respondent, the address is mentioned as



C.R.P.No.214 2023

No.29/23, Velavan Nagar, Kolathur, Chennai-99, that is the previous address of the petitioner/defendant. From the above evidence it is quite clear that no summons was duly served upon the respondent in his new address in the suit proceedings and he was not aware of the suit until he applied for Encumbrance Certificate. The respondent filed the application to set aside the ex-parte decree within 30 days from the date of knowledge. In the instant case, it must be noted that the respondent was not aware of the proceedings, since summons were not duly served on him. Therefore, the limitation starts from the date of knowledge and not from the date of decree.

9. In view of the forgoing reasons, the Revision fails and stands dismissed. Consequently, the connected miscellaneous petition also stands dismissed. However, there shall be no order as to costs.

06.12.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

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C.R.P.No.214 2023

To

The II Additional Judge,
City Civil Court,
Chennai.



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C.R.P.No.214 2023

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
C.R.P.No.214 of 2023

06.12.2024