



C.R.P.No.3196 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.3196 of 2024

1.Gunasekaran
2.Mani
3.Kumaran

.... Petitioners

vs

1.Ramasamy
2.Chella Perumal

..... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order passed by the Sub Judge, Cheyyar, Thiruvannamalai District in I.A.No.1 of 2022 in A.S.No.18 of 2016 dated 03.10.2023 by dismissing Section 5 petition filed by the petitioner to condone the delay of 116 days in filing the set aside exparte decree.

For Petitioners : Ms.T.Sreelekha

For Respondents : Mr.N.Beulah John Selvaraj



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ORDER

The Civil Revision Petition has been filed against the order passed by the Sub Judge, Cheyyar, Thiruvannamalai District in I.A.No.1 of 2022 in A.S.No.18 of 2016 against O.S.No.154 of 2007 dated 03.10.2023, dismissing the petition filed under Section 5 of the Limitation Act, seeking to condone the delay of 116 days in filing the set aside exparte decree.

2. The petitioners are the plaintiffs in O.S.No.154 of 2007 on the file of Principal District Munsif, Vandavasi. The suit was filed for permanent injunction restraining the defendants/respondents from interfering with the peaceful possession and enjoyment of the suit property. After full fledged trial, the suit was decreed in favour of the petitioners/plaintiffs on 03.01.2014 by the Principal District Munsif, Vandavasi. Against the judgment and decree dated 03.01.2014, the respondents/defendants preferred an appeal in A.S.No.18 of 2016 before Subordinate Court, Cheyyar at Tiruvannamalai and the Subordinate Judge, Cheyyar by judgment dated 25.02.2022 allowed the appeal exparte and set aside the decree and judgment of the trial Court. The petitioners/plaintiffs filed an application in I.A.No.1 of 2022 in A.S.No.18 of 2016 to set aside the exparte judgment along with a petition in I.A.No.1 of 2022 seeking to condone the delay



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of 116 days. It is the case of the petitioners/plaintiffs that exparte judgment was passed in A.S.No.18 of 2016 on 25.02.2022 and due to Covid, they were unable to file an application within time and thereby, there was a delay of 116 days.

3.The respondents/defendants have contended that the petitioners/plaintiffs were set exparte as early as 24.11.2016 and thereby there was a delay of 2065 days and objected to the condonation. The appellate Court holding that there was no explanation for the absence from 24.11.2016 and also holding that the petitioners/plaintiffs were directed to appear on 24.11.2016 and since they have not appeared before the Court, they were set exparte and the appellate court further holding that there was no Covid pandemic in the year 2016 and it was only from the year 2020 and stating that there was no satisfactory reasons adduced for the absence from 24.11.2016, dismissed the application in I.A.No.1 of 2022. Challenging the same, the present Civil Revision Petition has been filed.

4. Learned counsel for the petitioners/plaintiffs would submit that the first petitioner is a senior citizen and he has been taking care of the case. Learned



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counsel also submits that the trial court, after full fledged trial, has passed detailed judgment on 03.01.2014 in favour of the petitioners/plaintiffs and thereafter, without proper notice being served on them by the appellate Court, the petitioners/plaintiffs were set ex parte on 24.11.2016 and later the appeal was allowed and an ex parte judgment and decree was passed on 25.02.2022 during the prevalence of Covid. The petitioners/plaintiffs were unable to file an application during such period to set aside the ex parte decree and therefore, there had been a delay of 116 days. The petitioners, in fact, have filed an application to condone the delay of 116 days, whereas, during the course of arguments, the petitioners were forced to change the date as 24.11.2016 in the affidavit. Learned counsel further submits that the trial Court had given an erroneous finding that there was no Covid during the year 2016 and even otherwise, the appellate court has allowed the appeal and passed an ex parte decree which is not in compliance with the requirements of Order 41 Rule 31 of Civil Procedure Code. Thus non-observance of these requirements lead to infirmity in the judgment of the appellate Court.

5. Learned counsel for the petitioners/plaintiffs would further submit that



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the appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as on facts and the first appeal is a valuable right and at that stage, all questions of fact and law decided by the trial court are open for reconsideration, whereas, without proper court notice, they had been set exparte and an exparte decree had been passed. Learned counsel further submits that the petitioners/plaintiffs are prepared to pay cost and they are also ready to get along with the arguments in the appeal within the time frame fixed by this Court and thereby prays to set aside the order passed in I.A.No.1 of 2022 in A.S.No.18 of 2016.

6. Per contra, learned counsel for the respondents/defendants would submit that the respondents/defendants had been served with the private notice on the petitioners/plaintiffs in the appeal and the notices were served on 03.11.2016 and 24.11.2016 and that the petitioners/plaintiffs were directed to appear on 24.11.2016. Since they did not appear before the Court, they were set exparte on 24.11.2016 and the appellate court rightly finding that there is no proper explanation for the absence from 24.11.2016, had rightly dismissed the application and therefore seeks for dismissal of the revision.



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

8. This Court, on earlier occasion i.e., on 09.08.2024, had called for a Report from the Subordinate Court, Cheyyar, Thiruvannamalai with regard to the service of summons on the petitioners, who are the respondents in A.S.No.18 of 2016. A Report dated 16.08.2024 has been received in D.No.1985/2024 dated 16.08.2024. In the Report, it is stated that the appellate Court permitted the appellants/respondents in this revision to serve notice on the petitioners/plaintiffs.

The relevant portion of the Report dated 16.08.2024 reads as follows:-

“ As per the case records in A.S.No.18 of 2016, this Court was permitted to the Appellants to serve notice to the respondents namely Mr.Gunasekaran, Mr.Mani and Mr.Kumaran on 03.11.2016 under private service since the earlier notice sent through Learned District Munsif Court, Vandavasi has not been returned to this Court.

Therefore, the Counsel for the Appellants in AS No.18 of 2016 namely Mr/Mrs.N.Beulah John Selvaraj, Advocate having Office at No.333, 2nd Floor, New Additional Law Chamber, High Court Campus, Chennai-600 104 had taken private notice under Registered Post



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with Acknowledgment due through Department of Post, Government of India. The notices were served to the said respondents in various dates i.e., 03.11.2016 and 24.11.2016.

After the service of notice under Registered Post, the Counsel for the Appellants filed a Memo before this Court that the notice duly served in directly to the respondents and respondents were not present and therefore sought ex-parte order against the respondents and also submitted acknowledgment card (Proof of service) duly signed by the respondents in AS No.18 of 2016. In the result, this court was ordered on 24.11.2016 as ex-parte against the respondents in the Appeal.”

9. A perusal of Report received from the Subordinate Judge, Cheyyar would show that the Court notice has not been served on the petitioners/plaintiffs. However, as per Report, private notice has been served on the petitioners/plaintiffs on 03.11.2016 and 24.11.2016. Moreover, as per the findings of the appellate Court, the petitioners/plaintiffs were set exparte on 24.11.2016. Sofar as the application in I.A.No.1 of 2022 is concerned, it has been filed only to set aside the exparte decree and judgment dated 25.02.2022. The delay is only 116 days. Further, on perusal of the judgment and decree of the appellate court



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shows that it does not comply with the mandatory requirements of Order 41 Rule 31 of Civil Procedure Code.

10. On going through the lower court records, it is seen that the trial Court in O.S.No.154 of 2007 has framed four issues and the 1st petitioner/1st plaintiff was examined as P.W.1 and one Muthiyalu was examined as P.W.2 and Exs.A.1 to A.7 were marked and on the side of the respondents/defendants, the first respondent/first defendant was examined as D.W.1 and Exs.B.1 to B.35 were marked and detailed judgment was passed on 03.01.2014. Against which the appeal in A.S.No.18 of 2016 had been filed by the respondents.

11. Section 96 of the Civil Procedure Code, 1908 provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of Civil Procedure Code provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and



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- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

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12. Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 of Civil Procedure Code and non-observance of these requirements lead to infirmity in the judgment.

13. As stated above, the first appellate court, without examining any of these aspects, had set aside the judgment and decree of the trial court by a cryptic order and no reason has also been assigned in the appeal.



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14. In view of the above, the order passed by the Subordinate Judge, Cheyyar in I.A.No.1 of 2022 in A.S.No.18 of 2016 dated 03.10.2023 is set aside and the delay is condoned. The exparte judgment and decree passed by the Subordinate Judge, Cheyyar dated 25.02.2022 in A.S.No.18 of 2016 is set aside on condition that the petitioners deposit a sum of Rs.5,000/-(Rupees Five thousand only) as costs to the credit of A.S.No.18 of 2016 on the file of Subordinate Court, Cheyyar.

15. The appellate Court/Sub Court, Cheyyar shall issue notice to the respondents in A.S.No.18 of 2016 and the appellate Court is directed to dispose of the appeal within a period of four months from the date of appearance of the respondents before the Sub Court, Cheyyar.

16. The amount of Rs.5,000/- (Rupees five thousand only) deposited by the petitioners shall be disbursed to the respondents/appellants on filing of Memo.

17. With the above direction, the Civil Revision Petition is disposed of . No costs.

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Index:yes/no

website:yes

To

The Subordinate Court, Cheyyar



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A.D.JAGADISH CHANDIRA,J.,

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