



C.R.P.(PD).No.920 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.920 of 2021
and CMP.No.7466 of 2021

M.S.Moorthy

... Petitioner

vs.

1.S.Kamadevan
2.K.Pushpathalatha
3.I.Rahamathullah (died)
4.The Chitra Avenue Flat Owners,
Welfare Association,
Chitra Avenue,
No.9, Choolaimedu High Road,
Chennai – 94.
5.R.Firuthouse
6.R.Ayesha Shashimin
7.R.Hameed Thavla Fbrahim
(Respondent-3 died, respondents 5 to 7 brought on record
as LRS of the deceased R3 viz., I.Rahamathullah vide Court
Order dated 14.06.2023 made in CMP.Nos.6284, 6286 and
6289 of 2023 in CRP.No.920 of 2021 by SSKJ)

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the judgment and decree dated 18.08.2020 passed in I.A.No.3 of 2019 in O.S.No.7057 of 2015 on the file of the III Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.V.Bharathi

For Respondents : Mr.K.Ashok Kumar for R1 to R2
R3-died
R5 to R7-Door locked
No appearance for R4

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner to condone the delay of 431 days in filing petition to set aside the ex-parte decree passed against him.

2. The respondents 1 and 2 filed a suit against the petitioner and respondents 3 and 4 for recovery of sum of Rs.3,85,900/- towards damages. The suit was decreed ex-parte on 08.11.2017 by directing the petitioner and



3rd respondent to pay a sum of Rs.2,85,900/- with interest at the rate of 6% from the date of filing of the suit till the date of realization.

3. Thereafter, the petitioner who was arrayed as first defendant in the suit filed an application to set aside the ex-parte decree passed against him with the petition to condone the delay of 431 days in seeking to set aside the ex-parte decree.

4. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the suit summon was not served on him or his family members and the affidavit of service was filed before the Court with forged acknowledgment card.

5. The plea of forgery raised by the petitioner was disbelieved by the trial Court on the ground that the petitioner failed to take any steps to prove the forgery pleaded by him.

6. The learned counsel appearing for the petitioner submits that an opportunity shall be given to the petitioner to prove the forgery pleaded by



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him. The petitioner came to the Court with a specific plea that forged acknowledgment had been used to file affidavit of service. However, for the reasons best known to him, he failed to take any steps to prove said plea.

7. Having regard to the facts and circumstances of the case, this Court feels that the petitioner shall be given an opportunity to prove the plea of forgery by directing him to deposit a portion of the decretal amount. Therefore, the Civil Revision Petition is allowed by directing the petitioner to deposit a sum of Rs.75,000/- to the credit of O.S.No.7057 of 2015, on the file of the III Assistant City Civil Court, Chennai, within a period of four weeks from today. On such deposit, the order impugned in Civil Revision Petition is set aside and the matter is remitted back to the file of III Assistant Judge, City Civil Court, Chennai. The petitioner is at liberty to lead evidence to prove forgery pleaded by him. The trial Court is directed to consider I.A.No.3 of 2019 afresh after giving opportunity to the petitioner and dispose of the same as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order.



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8. In case the petitioner failed to deposit a sum of Rs.75,000/-

within a period of four weeks from today, the Civil Revision Petition stands

automatically dismissed without further reference to this Court. No costs.

Consequently, connected miscellaneous petition is closed.

12.02.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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To

The III Assistant City Civil Court,
Chennai.



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S.SOUNTHAR, J.

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