



C.R.P.(NPD)No.1252 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.1252 of 2023

and

C.M.P.No.8466 of 2023

J.Gopal

.. Petitioner

Vs.

1.S.A.Jeyakumar

2.P.Sivaprakasham

3.V.P.Sivakumar

.. Respondents

Prayer : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order, dated 11.01.2023, made in I.A.No.47 of 2023 in C.O.S.No.43 of 2022 on the file of the Principal District Court, Tiruppur.

For Petitioner : Mr.A.K.Sri Ram

Senior Counsel for Mr.C.Deepak Kumar

For R1 : Mr.S.Muthukumar

For R2 & R3 : Not Ready in Notice, No Appearance

ORDER



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The present Civil Revision Petition is at the instance of the third party to the suit.

2. C.O.S.No.43 of 2022 was presented by the 1st respondent herein for recovery of a sum of Rs.1,26,91,111/- together with an interest at the rate of 18% per annum as against the 2nd and 3rd respondents.

3. In this proceeding, the 2nd and 3rd respondents were served and since they remained *ex parte* and did not file their written statement within the period of 120 days as required by the Commercial Courts Act, the learned Principal District Judge at Tiruppur decreed the suit on 01.09.2022. While decreeing the suit, the learned Judge held that since security was not furnished pursuant to the order passed in I.A.No.275 of 2022, the schedule mentioned properties to I.A.No.275 of 2022 be attached.

4. It is the case of the civil revision petitioner that he is the owner of the 'C' petition mentioned property. This property had been a subject matter of allotment to one Lakshmi by virtue of a registered partition deed on the file of the Sub-Registrar at Nallur, dated 08.06.2018. The said Lakshmi is



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none else than the mother of the 3rd respondent/V.P.Sivakumar.

V.P.Sivakumar had obtained this property by way of a settlement deed from his mother on 02.07.2018. Soon thereafter, he alienated the property in favour of one D.Kalpana on 31.12.2018.

5. The petitioner claims that he had purchased the property from the said D.Kalpana on 19.07.2022 by way of a registered document. Claiming that he is the owner of the property, he took out an application in I.A.No.47 of 2023. This was an application seeking to raise the attachment passed against the property for which he is the owner.

6. Since the suit was decreed *ex parte*, two other applications came to be filed in I.A.Nos.1235 and 1255 of 2022. These two applications were the petitions filed by the 1st and 2nd defendants invoking the provision of Order IX Rule 13 of the Code of Civil Procedure to set aside the *ex parte* decree passed against them on 01.09.2022.

7. The learned trial Judge received a counter only in the application



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filed to set aside the *ex parte* decree and clubbed the said application along with the application filed to raise the attachment. By a common order, dated 11.01.2023, he dismissed all the three applications. Aggrieved by the said dismissal, the present revision has been presented before this Court.

8. Heard Mr.A.K.Sri Ram, learned Senior Counsel for Mr.C.Deepak Kumar, appearing on behalf of the petitioner and Mr.S.Muthukumar, appearing on behalf of the 1st respondent. I have gone through the order passed by the learned Principal District Judge at Tiruppur.

9. A perusal of the said order shows that the learned Principal District Judge at Tiruppur had discussed at length the merits of the applications filed in I.A.Nos.1235 and 1255 of 2022. He has not even given reasons as to why he had dismissed the application in I.A.No.47 of 2023 filed under Order XXXVIII Rule 9 of the Code of Civil Procedure.

10. The learned Judge is certainly entitled to club the applications pending before him. However, it is the duty of the learned Judge to give reasons while disposing of each and every application. An unreasoned order



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does not behave well. It does not answer the requirements of either the Commercial Courts Act or the Code of Civil Procedure. Every decree or order must be supported by reasons which is called a "Judgment". In case, the order is not supported by a Judgment, it necessarily has to be interfered with by the revisional Court. Though the third party/petitioner relies upon several registered documents, none of them have been marked during the course of enquiry in I.A.No.47 of 2023. Prejudice cannot be caused to a party on account of the mistake committed by the learned Presiding Officer. If as stated by the civil revision petitioner, the title had transferred to him, then for the default committed by the 3rd respondent, his property cannot be attached.

11. Mr.A.K.Sri Ram would submit that pursuant to a decree on 01.09.2022 in terms of Order XXXVIII Rule 11B of the Code of Civil Procedure, intimation had been given to the concerned Sub-Registrar to reflect in the encumbrance certificate the attachment that had been made by the Court. Such an attachment would certainly cause prejudice to the rightful owner of the property. However, I am not entering into the merits of the case as the learned Judge has not returned a finding on any of the points



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raised in the affidavit in support of the petition.

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12. Therefore, the order passed by the learned Principal District Judge at Tiruppur, in I.A.No.47 of 2023 in C.O.S.No.43 of 2022, dated 11.01.2023, is set aside. I.A.No.47 of 2023 shall be restored on to the file of the learned Principal District Judge at Tiruppur.

13. The learned Principal District Judge shall receive a counter from the 1st respondent/plaintiff and thereafter, proceed to adjudicate upon the issues. The learned Judge shall give sufficient opportunities to the petitioner as well as the respondent/plaintiff to bring forth such evidence as deemed fit in support of their respective cases.

14. Both sides agreed that they will appear before the learned Principal District Judge at Tiruppur on 08.07.2024. The learned Principal District Judge is requested to grant at least two weeks time for the 1st respondent/plaintiff to file his counter. Thereafter, he shall receive the records that may be presented by either side and dispose of the application in any event on or before 31.08.2024. The learned Judge is also requested to



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give reasons at the time of disposal of I.A.No.47 of 2023.

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15. With the above directions, the Civil Revision Petition stands allowed and the matter is hereby remitted to the file of the learned Principal District Judge at Tiruppur to dispose of the application afresh. The cost in the application will be dependent on the final orders to be passed in I.A.No.47 of 2023. Consequently, connected Civil Miscellaneous Petition is closed.

19.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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To

The Principal District Court,
Tiruppur

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and
C.M.P.No.8466 of 2023

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