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CRP.No.1656 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.1656 of 2024
and CMP.No.8743 of 2024

1.C.Sarveswawari
2.R.Seethalakshmi

3.M/s.Krishna Trading Corporation
No.144, Rasappa Chetty Street
Park Town, Chennai - 600 003.

... Petitioners

Vs

1.M/s.Murugesan Impex Pvt. Ltd
Old No.394, New No.791,
T.H.Road, Thiruvottiyur
Chennai - 600 019.
Represented by its Director Mr.S.Murugesu

2.K.Vijayalakshmi

3.M/s.SLO Industries
Represented by its Director
Mr.Anil Kumar Ojha
No.403/D, T.H.Road
Chennai - 600 019.

... Respondents



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Prayer : Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 07.03.2024 passed in I.A.No.04 of 2023 in O.S.No.364 of 2022 on the file of the learned XXII Additional City Civil Court, Allikulam, Chennai.

For Petitioners : Mr.I.Mohammed Faizal

For Respondents : Mr.K.Chandrasekaran for R1

ORDER

This civil revision petition arises against the order passed in I.A.No.4 of 2023 in O.S.No.364 of 2022. The suit in O.S.No.364 of 2022 is filed for recovery of possession and for mesne profits. The defendants 1,3 and 4 are the revision petitioners herein and the plaintiff is the first respondent.

2.1 Originally, the suit was presented before this Court and was taken on file in C.S.No.30 of 2011. The summons were served on the defendants. Since the defendants did not file their written statement, they were set exparte by this Court on 04.07.2018. Subsequently, an application under Order IX Rule 13 r/w. Sec.5 CPC was filed to condone the delay in setting aside the exparte decree. This was taken on file in A.No.271/2019. Pending this



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application, vide an order of this Court, the above suit came to be transferred to the City Civil Court for want of pecuniary jurisdiction, and it was re-numbered and taken on file as O.S.No.364 of 2022.

2.2 In the meantime, the defendants / revision petitioners filed an application before this Court in A.No.1959 of 2022 in C.S.No.30/2012. Therefore, the matter was taken up before this High Court for deciding the application in A.No.1959 of 2022. On 12.04.2024, the learned Single Judge of this Court had conditionally allowed the said application directing the defendants to deposit a sum of Rs.2,50,000/- to the credit of C.S.No.30/2012, and also directed the trial Court to conclude the trial within three months. Thereafter, the suit was remitted to the City Civil Court and was restored to its file on 17.08.2022. In spite of notices taken to the address of these defendants, as provided in the plaint, none appeared. Hence, the Trial Court came to pass an ex parte decree on 16.11.2022. On coming to know this, the petitioners filed a petition in I.A.No.4 of 2023 to condone the delay of 120 days in filing a petition to set aside the ex parte decree and I.A.No.5 of 2023 to set aside the ex parte decree dated 16.11.2022 in O.S.No.364/2022.



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3. Mr.I.Mohammed Faizal, learned counsel appears for the revision petitioners/defendants 1,3 and 4 and Mr.K.Chandrasekaran for the first respondent/plaintiff.

4. Mr.I.Mohammed Faizal, learned counsel submits that the said amount has already been deposited by him.

5. After increase in pecuniary jurisdiction of the City Civil Court, the suit stood transferred from the Original Side of High Court to XXII Additional City Civil Court at Chennai. However, an exparte decree came to be passed in O.S.No.364/2022 on 16.11.2022. To set aside the said exparte decree and to condone the delay in filing an application to set aside the exparte decree, I.A.No.5 of 2023 and I.A.No.4 of 2024 came to be filed by the defendants. The reason adduced by the revision petitioners/defendants 1,3 & 4 to condone the delay is that since notices were not served on them, they could not appear before the Trial Court.

6. The counsel for the plaintiff who had entered appearance submits that though notices were served on the defendants, they did not come and



contest the suit. He also specifically pointed out that the defendants' counsel was served with notice in transfer proceedings and therefore, they cannot plead ignorance.

7. The learned Trial Judge took up both I.A.No.4/2023 and I.A.No.5/2023 together and passed a common order on 07.03.2024 dismissing the said applications, and holding that no sufficient cause is made out on behalf of the petitioners/defendants, 1,3 & 4. Challenging the same, the present revision is filed.

8. The narration of aforesaid facts would go to show that the defendant had played every trick in the book to delay the proceedings from 2012. The plaintiff managed to get the decree twice, but was vexed with the repeated applications being filed by the defendants 1,3 & 4 to condone the delay in filing a petition to set aside the *exparte* decree and to set aside the *exparte* decree. Sufficient cause is *sine quo non* for the purpose of condonation of delay. Apart from that, the Court can glance at the relief sought in order to decide whether the delay must be condoned or not. Though the reason given by these defendants that they were not served with notice may be true, but



they cannot plead ignorance of it because their counsel had been served with the notice. As per Rule 31 of Civil Rules of Practice framed in terms of Section 122 CPC, notice given to a counsel is treated as notice given to the parties. In such circumstances, the lack of personal notices to defendants does not appeal to me.

9. The reason given by the defendants' counsel in not attending the Court is that he had suffered an accident and was not able to appear in the Court. Apart from that, the suit relates to recovery of possession of immovable property. Admittedly, the plaintiff is out of possession and the defendants 1,3 and 4 are in possession of the property. As the suit is one for possession of immovable property, I am inclined to condone the delay, but, on condition that the defendants pay a substantial cost towards the same.

10. Being satisfied with the reasons given in the affidavit filed in support of the application in I.A.No.4 of 2023 and I.A.No.5 of 2023, and in order to offset the prejudice that is caused to the plaintiff on account of the delay on the part of defendants, this revision is allowed on the following conditions:



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(a) The defendants 1,3 and 5 shall pay a sum of Rs.2,50,000/- to the plaintiff as costs, on or before 01.07.2024;

(b) Upon such payment being made to the plaintiff, the order dated 07.03.2024 will stand set aside and the Trial Court can take up the suit on to its file and dispose of the same on or before 02.12.2024.

However, it is made clear that in case the civil revision petitioners do not pay the cost within the time fixed by this Court, the civil revision petition will stand automatically dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking orders

To:

1.The XXII Additional Judge
City Civil Court
Allikulam, Chennai.

2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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