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C.R.P.No.1857 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

C.R.P.No.1857 of 2024

and

C.M.P.No.9776 of 2024

1.M/s.B.M.B. Foundations Private Limited,
Rep. by its Director,
Arvind Bagrecha,
No.153, Vellala Street,
Purasaiwalkam,
Chennai – 600 084.

2.M/s.B.M.B.Foundations Private Limited,
Rep. by its Authorized Signatory,
No.3/225, C-Type,
SIDCO Nagar,
27th Street, Villivakkam,
Chennai – 600 049.

3.Arvind Bagrecha

... Petitioners

Vs.

1.A.Mohanasundaram
2.M.Bhuvaneswari



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3.M/s.Team Housing and Developers

By its Proprietor V.Rameshvasan

No.201, C.T.H. Road,

Avadi, Chennai – 600 054.

4.V.Rameshvasan

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 13.02.2024 passed by the learned Principal District Judge at Tiruvallur in I.A.No.4 of 2023 in Comm.O.S.No.153 of 2022, by allowing this Civil Revision Petition and consequently to return the plaint in O.S.No.153 of 2022 to be presented to the Court in which the suit should have been initiated.

For Petitioners : Mr.Ralph V.Manohar

For Respondents 1 & 2 : Mr.R.Munuswamy

ORDER

This Civil Revision Petition has been filed by the defendants 1 to 3 in O.S.No.153 of 2022 to set aside the order dated 13.02.2024 passed by the learned Principal District Judge, Tiruvallur in I.A.No.4 of 2023 in Comm.O.S.No.153 of 2022.



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2.The contention of the learned counsel for petitioners is that an erroneous order was passed in I.A.No.4 of 2023 without application of mind to the statutory provisions. The respondents 1 and 2/plaintiffs filed the present suit for declaration to declare the sale deeds dated 22.01.2019, 19.11.2018, 10.07.2017, 31.01.2019 and 11.05.2017 as sham and nominal, invalid, legally unenforceable and for other reliefs. The petitioners/defendants 1 to 3 in the suit were set ex-parte on 08.12.2022 and on the same day, an application to set aside the ex-parte order dated 08.12.2022 was filed. The said application returned on the ground that the written statement cannot be taken on file as the same is filed beyond 120 days as stipulated under the proviso to Order VIII Rule 1 of C.P.C. At that stage only the petitioners aware that the suit was numbered as a Commercial Suit. When the petitioner received summons and plaint copy from the Court, nothing was mentioned or indicated that the suit was numbered as a Commercial Suit. Immediately, the set aside ex-parte order application in I.A.SR.No.277 of 2023 was



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represented on 24.02.2023 explaining that the suit is not with regard to a
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commercial dispute and thereafter the application in I.A.No.4 of 2023 was filed disputing the numbering of the suit as a Commercial Suit.

3.On perusal of the certified copy of the plaint, it revealed that the suit was originally filed as an ordinary suit and the trial Court returned the plaint on 18.03.2022 stating that the issue involved in the suit is a commercial transaction and therefore, under Section 12A(1) of the Commercial Courts Act, pre-suit mediation is mandatory and without which, the maintainability of the suit was questioned. The respondents 1 and 2/plaintiffs represented the suit on 22.03.2022 stating that the issue in the suit is not a commercial dispute and the plaintiffs asserts that the suit is for declaration and prays to number the same as an ordinary suit. But the trial Court came to a wrong conclusion that the plaint averment comes under Section 2(1)(c) of the Commercial Courts Act, 2015 and thus the suit was numbered as a Commercial Suit. Further, the trial Court justified the numbering of suit as a



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Commercial Suit on the ground that the transaction between the plaintiffs and defendants is commercial and financial transaction, thus, comes under Section 2(1)(c)(i) of the Commercial Courts Act.

4.The learned counsel further submitted that though the suit revolves around the financial transaction between the plaintiffs and defendants, the same cannot be termed as commercial transaction under Section 2(1)(c)(i) of the Commercial Courts Act. The relief sought in the suit is with regard to the financial transaction but against the immovable properties. The trial Court failed to look into Section 2(1)(c)(vii) and the explanation (a) of the Commercial Courts Act to decide whether the issue in the suit is a commercial dispute. The trial Court ignored the settled position, follow the judgment of the Hon'ble Apex Court in *Ambalal Sarabhai Enterprises Limited vs. K.S.Infraspac LLP and another* reported in *CDJ 2019 SC 1150*, wherein it is held that for a suit to be a commercial suit, all that needs to be proved is that the agreement which is the subject matter of



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dispute, is in relation to a immovable property, which is used exclusively or being used exclusively in trade or commerce. When the relief in the suit is sought against an immovable property it should be ascertained, if the dispute fits under the definition of Section 2(1)(c)(vii) of the Commercial Courts Act. The trial Court failed to look into the fact that the respondents 1 and 2/plaintiffs in the suit not pleaded that the immovable properties were exclusively used in trade or commerce on the date of cause of action for the suit. In such circumstances, the trial Court ought to have returned the plaint under Order VII Rule 10 of C.P.C. to be presented to the Court, in which, the suit should have been instituted.

5.He further submitted that in this case, the Principal District Court, Tiruvallur is also a designated Commercial Court. The trial Court assumed jurisdiction, therefore caused grave injustice to the petitioners, and the petitioners right to file a written statement after condonation of delay is denied. In normal circumstances, the delay ought to have been condoned and



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written statement can be taken on file. Due to trial Court observation that the case was taken as Commercial Suit hence, delay cannot be condoned beyond the period of 120 days, caused great prejudice to the petitioners and the right of the petitioners to file the written statement is denied. Even according to the plaintiffs, the suit does not fall within the definition of a commercial dispute and it is nowhere pleaded that immovable property in the suit was used for trade or commerce. The pleadings are categorical that the properties involved are agricultural lands. Hence, prayed to set aside the order dated 13.02.2024 in I.A.No.4 of 2022.

6.The respondents 1 and 2/plaintiffs filed their counter and submitted that the respondents 1 and 2 filed a suit in O.S.No.153 of 2022 against the petitioners herein, M/s.Team Housing and Developers and V.Rameshvasan, who are the respondents 3 and 4 herein, before the Principal District and Sessions Judge, Tiruvallur for declaratory relief and other consequential reliefs in respect of properties detailed in the plaint schedule.



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The trial Court registered the suit under the Commercial Courts Act and summons were sent to the revision petitioners and other defendants in accordance with the provisions of the Commercial Courts Act. Upon receipt of the summons, the revision petitioners entered appearance before the trial Court on 13.07.2022 and thereafter the suit was adjourned for filing written statement of the defendants 1 to 3/petitioners herein. In this case, the suit was posted for filing of written statement of the defendants 1 to 3/revision petitioners and 5th defendant on 21.09.2022, 30.09.2022, 08.11.2022, 09.11.2022, 16.11.2022, 23.11.2022, 25.11.2022, 30.11.2022 and finally on 08.12.2022. When the case was listed on these days, the trial Court finding no written statement filed even after lapse of 160 days and there was no representation on behalf of the defendants 1 to 3/revision petitioners, set them ex-parte and an ex-parte order was passed on 08.12.2022. The trial Court in compliance of the provisions of Commercial Courts Act, referred the suit for mediation/Lok Adalat. The petitioners failed to participate in the mediation



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proceedings. Hence, the suit was sent back from the mediation to the trial Court for further proceedings. Though ex-parte order was passed on 08.12.2022, the petitioners leisurely without any reason came up with an application to set aside the ex-parte order on 07.01.2023, but without any petition for condonation of delay.

7.In the affidavit filed along with the petition to set aside the ex-parte order, it is evident that the revision petitioners not cooperating with their counsel for signing the written statement and also failed to diligently conduct the case. It is clear that revision petitioners are not diligent and sincere to conduct the case before the trial Court and they do not have any respect on the Court proceedings. The trial Court finding that written statement is filed beyond the period of 120 days from the date of service of summons as per the provisions of Commercial Courts Act, returned the petition filed by the petitioners. Thereafter, the revision petitioners represented the said petition along with another petition in I.A.No.4 of 2023



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and sought for a direction, directing the Registry to number the application filed by them to set aside the ex-parte order dated 08.12.2022. The said application was dismissed by the trial Court with a reasoned order on 13.02.2024.

8.The learned counsel further submitted that on a demurrer, if it is found that the suit was wrongly numbered as Commercial Suit instead of ordinary suit, and the petitioners entered appearance on 28.06.2022 then to failed to file written statement even after lapse of 160 days. The revision petitioners ought to have filed their written statement within 30 days and thereafter at the discretion of the Court within 90 days as per the provisions of Order VIII Rule 1 of C.P.C. but the revision petitioners failed to file their written statement even after 190 days. Thus, it is clear that the revision petitioner neither showed interest nor serious in conducting the case and not cooperating with the judicial proceedings. Further submitted that the revision



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petitioners have no *locus standi* to maintain any petition unless the ex-parte order is set aside. The petitioners without challenging the return order of the trial Court, cannot seek indulgence of the trial Court to set aside the ex-parte order. Unless and until the ex-parte order is recalled, they cannot file any petition and also lead any evidence. He further submitted that on 08.12.2022 when the suit was posted for written statement, the petitioners neither appeared nor filed written statement, hence, they were set ex-parte. Further, in the impugned order, the trial Court recorded that the interlocutory application filed by the petitioners to set aside the ex-parte order was returned as the written statement not filed within 120 days as per Commercial Courts Act, 2015. Further, the trial Court also recorded that on perusal of the records it was found that the transaction between the plaintiffs and defendants is a commercial transaction, the suit was taken on file as Commercial Original Suit, which falls under Section 2(1)(c)(i) of the Commercial Courts Act. Further the trial Court observed that for the purpose of filing written



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statement by setting aside the ex-parte order, this Commercial Suit cannot be converted into Original Suit and dismissed the petition.

9.Considering the submissions made on either side and on perusal of the material, it is seen that the respondents 1 & 2/plaintiffs filed a suit for the relief of declaration of sale deed Document Nos.130/2019, 4847/2018, 129/2019, 1877/2017, 314/2019 and 2217/2017 as sham and nominal, invalid and legally unenforceable and also mandatory injunction directing the petitioners/defendants 1 to 3 to return and deliver the original title deeds and for permanent injunction restraining the petitioners from alienating or encumbering the suit schedule properties. The case of the petitioners is that though the written statement and counter were made ready by their counsel it was the petitioners, who failed to sign the papers, since they were unable to cooperate with their counsel due to their business and personal commitments. Hence, they were set ex-parte on 08.12.2022. Though the set aside petition was filed earlier, it was returned by the Registry on the ground that the suit is



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a Commercial Suit and written statement cannot be filed beyond the stipulated period. On perusal of the plaint, finding that the transaction between the petitioners/plaintiffs and respondents/defendants is a commercial dispute, the trial Court took the case on file as a Commercial Suit. The petitioners' contention that numbering of the suit as Commercial Suit is not correct, it ought to have been numbered as an ordinary suit under Order VII Rule 1 of C.P.C. and the petitioners were not aware when the summons and plaint copy were served to them that the case was taken on file as Commercial Suit, is without any basis. Further, the plaint was filed as regular suit and on perusal of the plaint and records the Court found that the transaction comes under Section 2(1)(c) of Commercial Courts Act, 2015 and hence, the suit was taken on file as Commercial Original Suit. Finding interlocutory application filed in the suit, pre-mediation under Section 12A(1) of Commercial Courts Act dispensed by order dated 24.03.2022.



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10. When the suit was returned that the suit does not fall under Section 2(1)(c)(i) of Commercial Courts Act, despite it is a financial transaction, which was clarified and the suit taken on file as Commercial Suit now petitioner take shield for non filing of the written statement within the stipulated period citing the earlier filing. Further in the absence of the petitioners, not challenging the order dated 24.03.2022, in taking the suit as Commercial Suit and thereafter participating in the suit and after nine months in a setting aside ex-parte order makes such a claim may not be proper. Further the petitioners relying upon *Ambalal Sarabhai* case for the reason that a dispute relating to immovable property per se may not be a commercial dispute on the facts of the present case is not applicable. Further contention of the petitioners is that merely because the suit was filed before the Commercial Court, the same cannot be entertained for the reason that the suit is of high value may not be proper. These are the grounds available for the petitioners, if a challenge is made on the order dated 24.03.2022, wherein the



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trial Court had taken the case on file as Commercial Original Suit, but not by
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challenging the impugned order, which was filed seeking the Registry to
number the application to set aside the ex-parte order dated 08.12.2022. In
view of the above, this Court finds no reason to interfere with the impugned
order passed by the learned Principal District Judge, Tiruvallur.

11.Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

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To

The Principal District Judge,
Tiruvallur.

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and C.M.P.No.9776 of 2024

22.07.2024