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C.R.P.(NPD).No.1989 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD) No.1989 of 2023

and

C.M.P.No.12522 of 2023

1.S.Adhithyavarman

2.S.Gayathri

..... Petitioners

-Versus-

M.Sulthan

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.1 of 2021 in O.S.No.70 of 2017 dated 09.02.2023 pending on the file of the Subordinate Court, Tirutani.

For Petitioners : Mr.V.Karthikeyan

For Respondent : No appearance

ORDER

This civil revision petition is at the instance of the defendants. They moved an application to condone the delay of 1333 days in filing an application to set aside the exparte decree dated 04.11.2017. This application was received in I.A.No.1 of 2021 in O.S.No.70 of 2017 and it came to be dismissed on 09.02.2023, against which the present revision.



C.R.P.(NPD).No.1989 of 2023

WEB COPY

2. O.S.No.70 of 2017 is a suit for recovery of money on the foot of two promissory notes dated 06.05.2014 and 02.08.2014. The promissory notes are said to have been executed by one Sudhakar, the father of the defendants. The said Sudhakar passed away on 08.01.2017 leaving behind his wife Indira and the defendants as his legal heirs. This was after, the plaintiff had issued a suit notice calling upon Sudhakar to pay the amounts under the promissory notes on 16.11.2016. During the course of argument, it was pointed out by Mr.V.Karthikeyan that Indira, the wife of Sudhakar is no more and hence, the suit was finally presented as against the present civil revision petitioners by the respondent on the ground that they have succeeded to the estate of Sudhakar.

3. Though the summons were not served on the parties, they were set exparte on account of the fact that a publication had been ordered in terms of Order 5 Rule 20 of the Code of Civil Procedure.

4. After being satisfied that the promissory notes had been proved, the learned Trial Judge decreed the suit on 04.11.2017. The civil revision petitioners moved an application to condone the delay in filing an application to



C.R.P.(NPD).No.1989 of 2023

set aside the exparte decree on the ground that they had not been served with the summons and also the fact that in quick succession their parents had passed on. They would also plead that they vacated from the address shown in the plaint, as it was a rented premises and moved on to a residence at Mugalivakkam.

5. Mr.V.Karthikeyan would submit that the present Aadhar Card of the civil revision petitioners had been presented before the learned Trial Judge which would substantiate the case that they are residing in Mugalivakkam and not in Tiruttani, the address mentioned in the plaint.

6. The learned Trial Judge issued notice in the application to condone the delay and received a counter from the respondent/plaintiff. She came to a conclusion that the petitioners/defendants ought to have informed the postal department that they have changed the address and since they did not do so, they are not dutiful citizens of this country. She also pointed out that though the petitioners/defendants had informed about the death of their mother, Indira, they did not inform the plaintiff about their change in address and this cast a huge shadow over their case. She further took into consideration that the



C.R.P.(NPD).No.1989 of 2023

grandmother of the defendants had applied for certified copies of the suit papers in order to file a claim application. Therefore, she came to a conclusion that the petitioners/defendants had knowledge of the proceedings and despite the same, they remained away from the Court and consequently, she dismissed the petition. This order is impugned before me in this revision.

7. Notice was ordered by this Court on 22.06.2023. Notice was served on the respondent/plaintiff privately but neither has he entered appearance through a counsel nor is he present in person to oppose the petition.

8. I have heard Mr. V.Karthikeyan for the petitioners.

9. The aforesaid narration of facts would show that the defendants are only representing the estate of the deceased Sudhakar. They are answerable only to the extent of properties of the deceased Sudhakar that have come into their hands. Nonetheless as they have been arrayed as the defendants in the suit, they are entitled to be put on notice.

10. The averments made in the petition as well as the order passed by the



C.R.P.(NPD).No.1989 of 2023

learned Trial Judge make it clear that the summons were never served on the defendants, but substituted service had been preferred by the plaintiff in order to serve the defendants. As required under Order V of the Code of Civil Procedure, the procedure prior to ordering publication, does not seem to have been followed in the present case.

11. When the defendants have not been put on notice, the first instance at which they came to know about the *exparte* decree is when the Execution Petition was presented against them. To impute knowledge on the grandmother of the defendants/petitioners would be to carry the principle of constructive notice too far. As summons has not been served in person, I am inclined to condone the delay.

12. Non-service of summons is a sufficient cause for the purpose of taking out an application under Section 5 of the Limitation Act successfully. That fact exists in the present situation. Therefore, I am inclined to condone the delay but since the plaintiff had approached the court in the year 2017 and as the matter has been pending for seven years at the instance of the defendants, I



C.R.P.(NPD).No.1989 of 2023

am not inclined to give a free ride to the defendants.

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13. The suit is on the foot of two promissory notes and therefore, I feel if the interest of the plaintiff is secured by way of a direction to the defendants to deposit the amount, then it would balance the interests of both parties. Accordingly, the order dated 09.02.2023 passed in I.A.No.1 of 2021 in O.S.No.70 of 2017 is set aside and this revision is allowed with the following directions:

(a) I.A.No.1 of 2021 in O.S.No.70 of 2017 will stand allowed on the defendants depositing a sum of Rs.1,40,000/- namely the principal amount covered by the two promissory notes to the credit of O.S.No.70 of 2017.

(b) The said deposit shall be made within a period of four weeks from today ie. on or before 20.08.2024.

(c) In case, the defendants fail to deposit the said amount, then the benefit of this Order will not enure in favour of the defendants/civil revision petitioners.

(d) From the typed set of papers, I am able to see that the written



C.R.P.(NPD).No.1989 of 2023

statement has already been presented by the defendants and hence, if the defendants comply with the terms of this order, the court shall issue notice not only to the learned counsel appearing for the plaintiff but also to the plaintiff in person, for which summons, the defendants shall bear the costs.

(e) On being satisfied that the notice has been served on the plaintiff, the learned Judge is requested to number the application filed under Order IX Rule 13 and allow the same and take up the suit for final disposal.

(f) Being a suit restored on account of this order and a simple money suit, the Court shall endeavour to dispose of the suit within a period of nine months from the date of restoration of the suit.

(g) In case the defendants comply with the aforesaid direction mandating deposit of Rs.1,40,000/-, the same shall be kept in the interest bearing account pending disposal of the suit.

23.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



C.R.P.(NPD).No.1989 of 2023

To
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1.The Subordinate Court, Tirutani



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C.R.P.(NPD).No.1989 of 2023

V.LAKSHMINARAYANAN, J.

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C.R.P.(NPD).No.1989 of 2023

23.07.2024