



C.R.P.No.2457 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.2457 of 2022

and

C.M.P.No.12696 of 2022

C.Durai
S/o Chinnappan

... Petitioner

vs.

1. M.Susila,
W/o P.Muralitharan

2. C.Dhanammal
W/o Chinnappan

... Respondents

Prayer in CRP : The Civil Revision Petition filed under Article 227 of the constitution of India against the Fair order and decretal order of the XXII Additional City Civil Court at Allikulam, Chennai passed in I.A.No.2 of 2021 in O.S.No.5070 of 2019 dated 22.06.2022.

For Petitioner : Mr.A.Ilayaperumal

For Respondent : Ms.V.Srimathi for R2
R2-died

ORDER

This civil revision petition has been filed against the fair and



decreetal order passed by the learned XXII Additional City Civil Court at Allikulam, Chennai in I.A.No.2 of 2021 in O.S.No.5070 of 2019 dated 22.06.2022, by which, the petition filed by the petitioner herein to set aside the exparte order dated 10.01.2020 in O.S.No.5070 of 2019 was dismissed.

2. The case of the petitioner in brief is as follows:

The plaintiff/1st respondent herein has filed a suit for specific performance for enforcing the sale agreement dated 10.08.2011 entered into between the petitioner and the respondents by directing the petitioner to execute the sale deed in favour of the 1st respondent on receipt of the balance sale consideration and to deliver vacant possession, in the alternative, directing the petitioner to refund the sale consideration received. On 10.01.2020, when the suit was posted for filing written statement, the petitioner suffered viral fever from 06.01.2020 and the doctor advised him to take bed rest for three weeks and hence, he was not able to appear before court on that day and hence, failed to file written statement and was unable to proceed the case further. However, the court set the petitioner as exparte on 10.01.2020. After recovery from illness, the petitioner contacted his counsel and came to know of the same and subsequently, filed an application to set aside the exparte order in



I.A.No.2 of 2021. However, without considering the same, the court below dismissed the said petition. Hence, the present civil revision petition has been filed.

3. When the matter was taken up for hearing on 12.02.2024, this Court directed the Registry to call for remarks as to whether the petitioner has filed the written statement along with the petition in I.A.No.2 of 2021 in O.S.No.5070 of 2019.

4. Pursuant to the above order, a report was received from the concerned Court on 21.02.2024 wherein it is stated that the written statement of the petitioner/1st defendant is available in the bundle and there is neither court seal nor the signature of the Judge in the written statement; that there is one endorsement made by the counsel for the plaintiff (Ms.No.540/2016) on 29.04.2021 as he received a copy of written statement; that a memo was filed by the petitioner/ 1st defendant mentioning SR number of pending CRP; that on 31.10.2022, learned counsel for the petitioner/1st defendant was present and the said memo was recorded; that thereafter, on 30.11.2022, 21.02.2023, 31.03.2023 & 28.07.2023, learned counsel appeared for 1st defendant; that on 31.08.2023, there was no representation for 1st defendant and that as no stay was granted by this Court in the CRP, the matter was posted to



C.R.P.No.2457 of 2022

23.02.2024, awaiting the orders of this Court.

WEB COPY

5. From the above report, it is clear that the petitioner/1st defendant had filed the written statement and only due to his illness and Covid-19 pandemic situation, he was not able to file the written statement in time. Therefore, this Court is of the view that one more opportunity shall be given to the petitioner to contest the case by setting aside the exparte order. Accordingly, the order dated 22.06.2022 passed by the XXII Additional City Civil Court at Allikulam, Chennai in I.A.No.2 of 2021 in O.S.No.5070 is hereby set aside. The learned trial Judge is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. If the counsels do not co-operate for the disposal of the suit, the learned trial Judge shall pass appropriate orders with the materials available on record. Accordingly, the Civil Revision Petition is disposed of. No costs. consequently, connected miscellaneous petition is closed.

28.02.2024

Index :yes/No
Speaking /Non speaking order
vsi



C.R.P.No.2457 of 2022

To

WEB COPY

The XXII Additional City Civil Court
at Allikulam,
Chennai



WEB COPY



C.R.P.No.2457 of 2022

J.NISHA BANU, J.

vsi

C.R.P.No.2457 of 2022

28.02.2024