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C.R.P.[NPD].No.2233 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.2233 of 2023 & CMP.No.13558 of 2023

B.Saravanan

. . . Petitioner

Versus

K.S.Kannappan [died]

1. Thilagavathi
2. Minor Sanjeev
3. Minor Vishalini

Both the minors are represented by their
guardian mother Thilagavathi

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 18.04.2023 passed in i.A.No.306 of 2012 in O.S.No.197 of 2001 on th file of the learned Additional Sub Ordinate Judge, Tiruppur.

For petitioner : Mr.K.Myilsamy

Respondents : Mr.S.Saravanan

ORDER



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Challenging the dismissal of the application filed under section 5 of the Limitation Act to condone the delay of 958 days in filing an application to set aside the exparte decree, the present Civil Revision Petition has been filed.

2. Brief background of the case is as follows :

The suit has been laid for specific performance on the basis of an unregistered agreement dated 12.04.2000 said to have been executed by the first defendant. The present revision petitioner has been arrayed as the second defendant in the suit. According to the plaintiff, the first defendant has executed the agreement and as he committed default in performing his part of the obligation, the suit came to be filed. Whereas, it is the contention of the revision petitioner that the first defendant sold the property to him on 20.09.2000. The so called unregistered agreement for sale has been created between the plaintiff and the first defendant to defeat the sale made in favour of the second defendant.

3. It is the contention of the learned counsel appearing for the revision



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petitioner that since he was under bonafide impression that the first defendant would take care of the suit and on his advice he has engaged one Mr.S.Basuviah, Advocate of Tiruppur on his behalf to contest the suit. Whereas, the first defendant was represented by one counsel named Mr.K.S.Shanmuga Sundaram. However, the learned counsel appearing on behalf of the revision petitioner reported no instructions. Therefore, the second defendant has been set exparte and the first defendant has also been conveniently set exparte. Therefore, the suit came to be decreed in one line Order. It is the further contention of the revision petitioner that the counsel who appeared on behalf of the first defendant has obtained change of vakalat later and he has appeared for the plaintiff which is apparent on the face of records. Despite these reasons shown to condone the delay and that there was a collusion between the parties and the advocates, the trial Court has not considered all these aspects and dismissed the application.

4. It is further contention of the learned counsel appearing for the revision petitioner that as against the dismissal of the application filed in the



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Execution Proceedings in E.A.No.48 of 2022, a Civil Revision Petition has been filed before this Court in CRP [NPD] No.2586 of 2017 and the same has been allowed. In the above Civil Revision Petition, the same reasons have been stated to condone the delay of 106 days in preferring an application to set aside the exparte Order passed in the Execution Petition. This Court considering the nature of allegations raised against the parties as well as the lawyers, allowed the Civil Revision Petition and set aside the exparte Order. Hence, it is the contention of the learned counsel that despite these reasons shown to condone the delay and that there was a collusion between the parties and the advocates, the trial Court has not considered the same and the application filed to set aside the exparte decree has been dismissed. It is his further contention that the exparte decree has been passed in one line Order and same cannot be valid in the eye of law. Hence, prayed for allowing this Civil Revision Petition.

5. The learned counsel appearing for the respondent would submit that the revision petitioner engaged a separate lawyer and he has reported no



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instructions and therefore, he has been set exparte. It is his contention that that the revision petitioner is aware of the exparte decree passed in the suit and the delay has not been properly explained and hence, he opposed this Civil Revision Petition.

6. Heard both sides and perused entire materials available on record.

7. Though the length of delay appears to be long, the length of the delay is not a matter when the Court consider substantive justice, particularly, when the entire proceedings appears to be tainted with certain amount of collusion, length of the delay does not matter. The fact that the suit for specific performance filed on the basis of an unregistered agreement of sale dated 12.04.2000 is not in dispute. Similarly, it is not in dispute that the first defendant has sold the property to the second defendant by way of a registered sale deed dated 20.09.2000. It is the specific contention of the revision petitioner that the agreement dated 12.04.2000 is created anti dated in collusion between the plaintiff and the first defendant. To buttress his submissions, he has also placed on record the earlier Order passed by this court



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in CRP.NPD No.2586 of 2017. Further, this Court also summoned original vakalat filed before the trial Court. On a perusal of the vakalat, it is seen that one Mr.K.S.Shanmuga Sundaram, who appeared for the first defendant, has later appeared for the plaintiff and immediately, the first defendant has been set exparte. The counsel engaged by the second defendant reported no instructions, which resulted in passing of the exparte decree.

8. In the above circumstances, this Court, prima facie is of the view that one more opportunity has to be given to the revision petitioner to contest the suit on merits, since he relied upon the registered document executed by the first defendant. The reasons assigned by the petitioner is more probabilized due to the appearance of the first defendant's lawyer on behalf the plaintiff. In such view of the matter, this Court is inclined to extend the benefit to the revision petitioner by granting liberal approach for the word “sufficient cause” by condoning the delay of 958 days.

9. Further it is also to be noted that the exparte decree has been in one line, which reads as follows :



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“The counsel for defendants 2 reported no instruction on vakalath defendant 2 called absent set exparte. Defendant 1 already set exparte. P.W.1 proof affidavit already filed. Exhibit A1 to A4 already marked. Claimproved. Preliminary decree passed. Time for payment one month.”

The above decree, in view of this Court, is not a judgment in the eye of law. Every judgment should be specific as per set out under Order XX Rule 4 of Code of Civil Procedure. Therefore, this Court is of the view that the judgment of the trial Court cannot be sustained in the eye of law. Hence, this Court, prima faice is of the view that the proceedings are tainted with some collusion between the parties and the defendants have been set exparte immediately after the learned counsel reported no instructions and no notice whatsoever has been sent to the petitioner before passing the exparte decree. Hence, the delay in filing an application to set aside the exparte decree has to be condoned.

10. Accordingly, this Civil Revision Petition is allowed and the order



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of the trial Court made in I.A.No.306 of 2012 in O.S.No.197 of 2001 is set aside and the trial Court shall set aside the ex parte decree and proceed the suit in accordance with law and dispose of the suit on its own merits within a period of four months from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

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