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C.R.P.No.3447 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04..12..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.3447 of 2024

and

C.M.P.No.18725 of 2024

Somasundaran

..... Petitioner

-Versus-

1.Nataraj

2.Rasappa Nadar

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 11.07.2024 made by the learned Subordinate Judge, Kangeyam, Tiruppur District, in I.A.No.33 of 2020 in O.S.No.151 of 2014.

For Petitioner : Mr.K.Sudhakar

*For Respondent(s) : Mr.P.Navaneetha Krishnan for
RI*



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ORDER

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Challenging the order dated 11.07.2024 passed by the learned Subordinate Judge, Kangeyam, Tiruppur District, refusing to condone the delay of 1566 days in filing the application seeking to set aside the ex parte decree dated 16.06.2015 and thereby dismissing the application in I.A.No.33 of 2020 in O.S.No.151 of 2014, the 2nd defendant in the suit has come up with the present revision petition.

2. The 1st respondent is the plaintiff, and the 2nd respondent is the 1st defendant in the suit in O.S. No. 151 of 2014.

3. The suit was filed for specific performance of the contract dated 14.05.2012 entered into between the plaintiff and the defendants, whereunder the defendants agreed to sell the suit schedule mentioned properties for a total consideration of Rs.2,20,000/- . The plaintiff pleaded in the plaint that he had paid a sum of Rs.2,00,000/- towards an advance to the defendants on the date of the agreement itself, and the balance of Rs.20,000/- was agreed to be paid within a period of two years from the date of the agreement. The plaintiff further pleaded that he was always ready and willing to pay the balance and to get the sale deed executed in his favour, but it was the defendants who delayed



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the sale and were giving evasive replies. Hence, the plaintiff issued a legal notice to the defendants and thereafter, filed the suit for specific performance of the contract.

4. According to the plaintiff, despite service of summons, the defendants did not appear, and therefore, they were set ex parte, and the suit was decreed ex parte by judgement dated 16.06.2015. Thereafter, an execution petition was filed in E.P.No.10 of 2018 to have the sale deed executed through court. Despite service in the said execution petition, the judgement debtors/the revision petitioner and the 2nd respondent herein did not appear, and they were set ex parte and the execution petition was allowed. Accordingly, the decree holder/1st respondent-plaintiff has had the sale deed executed in his favour through court. Thereafter, decree holder/1st respondent-plaintiff filed another petition in E.P.No.109 of 2019 for delivery of possession of the suit-scheduled mentioned property, wherein, upon notice, the judgement debtors entered appearance through counsel on 20.12.2019. Thereafter, the application under Section 5 of the Limitation Act came to be filed seeking to condone the delay of 1566 days in filing the application to set aside the ex parte decree dated 16.06.2015.

5. The revision petitioner pleads that he never entered into any



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unregistered sale agreement with the plaintiff and the agreement of sale pleaded

in the plaint is a fabricated one. He was not served with a summons in the suit.

He was not present in the village at the relevant point of time, as he relocated at Chidambaram on account of his employment. He was set ex parte on 10.03.2015 and thereafter, on 16.06.2015, an ex parte decree was passed against him. He was not aware of the ex parte decree passed on 16.06.2015. Only in June, 2019 when he visited the village he came to know about the ex parte decree. No summons was taken to his relocated residence at Chidambaram. Hence, there had occurred a delay of 1566 of days in filing the application seeking to set aside the ex parte decree.

6. On notice in the said delay condonation application, the 1st respondent/plaintiff filed a detailed counter opposing the application. According to the 1st respondent, the revision petitioner is the son of the 2nd respondent and the 2nd respondent was served with summons on 16.06.2014. The 1st defendant though entered appearance through a counsel, did not file his written statement and therefore, on 06.11.2014, the 1st defendant was set ex parte. As the revision petitioner/2nd defendant was reportedly out of station, the court bailiff served the summons on the revision petitioner/2nd defendant by affixture on his ordinary residence. The 1st defendant entered appearance on 22.07.2015



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through a counsel. Thereafter, again fresh summons was ordered to the revision petitioner. Again on 16.09.2014 the summons was served by affixture as the revision petitioner was reportedly out of station. Thereupon, substituted service by way of paper publication was effected against the revision petitioner on 25.02.2015. Thereafter, the 2nd defendant was also set ex parte on 10.03.2015 and an ex parte decree was passed on 16.06.2015. There is no plausible explanation offered for the inordinate delay of 1566 days in filing the application to set aside the ex parte decree.

7. On considering the above, the court below dismissed the delay condonation application by order dated 11.07.2024. It is this order which is under challenge in the present revision petition by the 2nd defendant.

8. Heard Mr.K.Sudhakar, learned counsel for the revision petitioner and Mr.P.Navaneetha Krishnan, learned counsel or the 1st respondent.

9. The learned counsel for the revision petitioner would submit that the suit summons was not served on the revision petitioner/2nd defendant. The revision petitioner was not in the village at the time when the suit summons was sought to be served on him as he relocated his residence to Chidambaram on account of his job. The court has failed to consider the fact that the valuable



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right of the revision petitioner has been taken away through a mere technicality in the delay condonation application. The decree, though ex parte, is defective in the eye of law, as there was no proper service of summons on the revision petitioner, and he was set ex parte only on effecting paper publication.

10. The learned counsel for the revision petitioner would further submit that the ex parte decree was passed without framing proper issues, and none of the conditions stipulated under Order XX, Rules 4, 5, and Section 2 (9) and 47 of CPC were fulfilled, and the judgement without any finding is nullity in the eye of law.

11. The learned counsel for the revision petitioner in support of his contentions that (i) the length of delay does not matter and the sufficient cause alone matters; (ii) courts have to adopt liberal approach in interpreting the phrase “sufficient cause” (iii) even though the substituted service was effected, it would be of no effect in as much as the revision petitioner was not residing at the village and his father’s house was at the village and when no direct service was made and substituted service was insufficient, it cannot be termed as service in the eye of law; relied on the following judgements:-



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(i) Collector, Land Acquisition, Anantnag and another

v. Mst.Katiji and others, AIR 1987 SC 1353;

(ii) N.Balakrishnan v. M.Krishnamurthy, AIR 1998 SC

3222;

(iii) Sonerao Sadashivrao Patil and another v.

Godawaribai Laxmansingh Gahierewar and others AIR 1999

Bom 235;

(iv) V.Amudha v. S.A.Arumugham and others, 1999

SCC OnLine Mad 550;

(v) T.Indira v. R.Deepa, 2007(4) CTC 310;

(vi) P.Subramanian (Died) and others v. S.Viswasam,

2010 (18) CTCOL 477;

(vii) GNG Engineering Industries and others v. ISSA

Green Power Solution and others, 2015 (2) MWN (Civil) 684;

(viii) R.Stella v. V.Antony Francis, CRP (NPD) (MD)

No.1303 of 2012.

12. Further, the learned counsel for the revision petitioner/2nd defendant would, in support of his contention that judgement without any finding is



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nullity in law, placed reliance heavily upon the judgement of the Hon'ble Supreme Court in the case of Asma Lateef and another v. Shabbir Ahmad and others, 2024 INSC 36 : (2024) 4 SCC 696 : (2024 (1) MLJ 563 (SC).

13. Per contra, the learned counsel for the 1st respondent would contend that the revision petitioner/2nd defendant did not state any sufficient cause for the huge delay of 1566 days in filing the application to set aside the ex parte decree dated 16.06.2015. The revision petitioner/2nd defendant was served with summons by affixture of the same on his house as well as by substituted service through paper publication. As the revision petitioner/2nd defendant had not entered appearance, he was set ex parte and an ex parte decree was passed. On the basis of that ex parte decree, an execution petition was filed. Despite service in the execution proceedings, the judgements debtors did not appear, and as such they were set ex parte, and the sale deed was executed by the court in favour of the 1st respondent/decreed-holder. Thereafter, another application was filed for delivery of possession, wherein, upon notice, the revision petitioner/2nd defendant and his father, the 1st defendant, entered appearance through their counsel and filed a counter opposing delivery of possession and also filed the application seeking to set aside the ex parte decree along with an application seeking to condone the delay of 1566 days in filing the application



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to set aside the ex parte decree. The revision petitioner and his father were wantonly away from the suit proceedings as well as in the earlier execution proceedings.

14. The learned counsel for the 1st respondent/decreed-holder would further contend that when the defendants had not entered appearance and filed their written statement, the question of framing of issues would not at all arise. The trial court had recorded the reasons for proceeding ex parte in the suit and decided the fact in issue based on the available pleadings and oral and documentary evidence adduced by the plaintiff and granted a decree for specific performance of contract. Therefore, the order of the court below dismissing the delay condonation application does not require any interference at the hands of this court.

15. The learned counsel for the 1st respondent/plaintiff placed much reliance on the judgement of this court in the case of **M/s.Kirubasanam Kiruothuvin Saba v. T.Ramanathan and others** [CRP (NPD) No.1759 of 2023 dated 13.03.2019] wherein this court has held as follows:-

“21. It is well settled that there must be "sufficient cause" in the application to condone the delay, satisfactory reason has to be given. Though the word



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"sufficient cause" mentioned in Section 5 of the Limitation Act is normally approached liberally, to give such liberal approach there must be acceptable and palpable reason in the petition. On perusal of the affidavit there is no reason whatsoever for such huge delay.

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Now the Courts are very liberal in approaching Section 5 of Limitation Act applications to advance the substantial justice. To exercise such liberal approach there must be reasonable ground. As stated above, absolutely, there is no merit in the application and there is no acceptable reasons found in the affidavit. Therefore, this Court does not find any infirmity or illegality in the order passed by the trial Court in dismissing the application. Accordingly the Revision Petition is dismissed.

16. I have considered the rival submissions carefully.

17. The suit was filed for specific performance of contract entered into between the plaintiff and the defendants 14.05.2012. The suit was decreed ex parte on 16.06.2015. Thereafter, the plaintiff initiated an execution proceedings in E.P.No.10 of 2018 to enforce the decree of specific performance of contract



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wherein, despite notice, the defendants did not appear. Hence, ex parte order was passed in the execution proceedings and sale deed was executed by the court in favour of the plaintiff. Thereafter, another execution petition was filed for delivery of possession of the suit property. On notice in the said proceedings, the defendants entered appearance through their counsel and opposed the execution proceedings initiated for delivery of possession. Thereafter, the 2nd defendant filed an application seeking to condone the delay of 1566 days in filing the application to set aside the ex parte decree on the ground that he was not served with summons in the suit and at the time when the summons was sought to be served, he was away from the village due to his avocation.

18. The civil revision petitioner/2nd defendant examined himself as P.W.1, one Subramaniam, paternal uncle of the revision petitioner as P.W.2 and Ms.Indira, mother of a friend of the revision petitioner, as P.W.3 and marked the returned court summons and returned Postal Covers as Ex.P.1 to P.7. No one was examined on the side of the respondents, nor was any document marked.

19. Even though much reliance was placed on the evidence P.W.3, a



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thorough examination of all the evidence reveals that it is purely fabricated, while P.W.1's evidence would suggest that he was all along living with his father.

20. It is difficult to accept the contention of the civil revision petitioner that summons was not served on him as he was not living in the village at the pertinent time, and that he relocated to Chidambaram because he had been working there for more than seven years for a chit fund company.

21. If he had really moved to Chidambaram at the relevant point in time in connection with his employment in the Chit Fund company, he could have produced his salary certificate. None from the chit fund company was examined by the revision petitioner to substantiate his contention that he was away from his village at the time when the summons was sought to be served.

22. The address where the revision petitioner (P.W.1) resided from 2012 to 2019 has not even been disclosed anywhere in the affidavit or in his evidence. He implicitly acknowledged that all of his identification documents and proof of address were provided for the address listed in the plaint.

23. In her chief examination, P.W.3, who is the mother of one Manikandan, a friend of the revision petitioner, claimed that the revision petitioner lived at her home from 2012 to 2019 due to his avocation. She added that the revision petitioner left Manthope village and remained at her home in



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Chinnakuthuvakarai in Sirkali as he had some disagreements with his father.

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24. This court, in normal circumstances, if the summons were not served, would certainly take a liberal approach, and in order to afford an opportunity, proceed to condone the delay. The evidence of P.W.1 would indicate that he was all along residing with his father at the address set out in the plaint. He purposefully evaded to receive the summons and had later on come up with a plea that he was not in the village at the relevant point of time and he moved his residence to Chidambaram due to avocation.

25. That apart, it is relevant to note that summons was served on the 2nd respondent/1st defendant on 16.06.2014 and the 2nd respondent/1st defendant is none other than the father of the civil revision petitioner/2nd defendant. This fact is not in dispute. Thus, it is hard to believe that the father had not informed his son about the pendency of the suit filed by the 1st respondent/plaintiff for specific performance of contract for more than 4 years. Furthermore, when the civil revision petitioner was not available at the address where he was ordinarily residing, summons was served by affixture on the doors of the house of the revision petitioner where he was ordinarily residing. Thereafter, substituted service was taken by way of paper publication for the civil revision petitioner/2nd defendant. Even assuming that the revision petitioner/2nd defendant was away for some time, on 16.06.2014 itself summons was served



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on the other member of his family in individual capacity. Therefore, it cannot be said that the petitioner had no knowledge about the suit summons and the pendency of the suit.

26. All these facts would clearly go to show that the civil revision petitioner was not diligent in contesting the suit proceedings for more than 4 years, and only after the value of the properties had skyrocketed did the petitioner think to file an application seeking to condone the delay of 1566 days in filing the application to set aside the ex parte decree. Thus, this court is of the view that the revision petitioner has not made out sufficient cause to condone the delay.

27. It has been consistently held by the Hon'ble Supreme Court that the delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The Hon'ble Supreme Court has also been consistently reiterating that the court must consider the reason for the delay rather than the duration of the delay. The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case.

28. On going through the ex parte judgement dated 16.06.2015, this court finds that there was no issues framed as no written statement was filed by the 1st defendant though he entered appearance through a counsel and he was



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set ex parte and the 2nd defendant remained ex parte.

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29. Order XX, Rule 5 of the Code of Civil Procedure (CPC) states that in suits with framed issues, the court must state its decision and reasons for each issue. When the defendants had not contested the suit by filing their written statement, question of framing issues and giving findings on each issue separately would not at all arise.

30. At the same time, there is no dispute over the established rule that even for an ex parte judgement, the essential components of a judgement must be present to the degree that they demonstrate that the Court has given careful consideration to the pleading, the relief sought under it, the supporting documentation, and the conclusion reached by the Court regarding the aforementioned. This is especially true in a case involving specific performance of the sale agreement, where the plaintiff must assert and demonstrate that he was prepared and willing from the time of the agreement until the court executed the sale deed. This plaintiff rightly averred so in his plaint.

31. The court below has considered the fact in issue and passed ex parte judgement. The ex parte judgement contained a concise statement of the material facts and reasons. The ex parte judgement in the instant case validly constitute a judgement. This court does not find any illegality or irregularity in the same. Thus, the arguments advanced by the learned counsel for the revision



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petitioner that the ex parte judgement was not in consonance with the provisions under Order XX, Rule 4 and 5 of CPC cannot be countenanced.

32. In light of the above legal and factual aspects of the matter, this court is of the considered view that when the civil revision petitioner did not act diligently and had remained passive, he is not entitled to have the delay excused. The judgements upon which reliance was placed by Mr.K.Sudhakar are not applicable to the facts of the present case.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
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To

1.The Subordinate Judge, Kangeyam, Tiruppur District.

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N.SATHISH KUMAR.J.,
kmk

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