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C.R.P. No. 3564 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3564 of 2022

and

C.M.P. No. 18935 of 2022

1. P.Anandan

2. K.Kaviyarasu ... Petitioners / Respondents / Plaintiffs

Vs.

V.M.Thirumoorthi ... Respondent / Petitioner / Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 22.06.2022 made in I.A. No. 1 of 2021 in O.S. No. 16 of 2017 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam.

For Petitioners : M/s. N.Kathiresan
for Mr. P.B.Balasubramanian

For Respondent : M/s. Zeenath Begum

ORDER



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This Civil Revision Petition has been preferred as against the order dated 22.06.2022 made in I.A. No. 1 of 2021 in O.S. No. 16 of 2017 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam, wherein, the respondent herein has filed petition before the Trial Court under Order IX Rule 13 of CPC to set aside the exparte decree passed on 11.12.2017. The said petition was allowed by the Trial Court on payment of cost Rs. 3,000/-. Against which, the present Civil Revision Petition is filed.

2. According to the petitioners, they are the plaintiffs in the main suit. The petitioners/plaintiffs have filed the main suit for the relief of specific performance of contract and the said suit was posted for filing written statement on 12.10.2017 but the respondent did not appear before the Court and not filed any written statement. Thereby, exparte decree was passed against the respondent on 11.12.2017. The respondent filed petition on 10.01.2018 without giving notice to the petitioners and the same was returned. Thereafter, the respondent without taking any steps filed this petition along with Section 5 of the Limitation Act, 1963 and also filed petition along with Section 148 and 151 of C.P.C. The respondent has filed petition after the filing of the execution petition in E.P. No. 8 of 2019. In the execution petition,



the respondent was set *ex parte*. The respondent without following up the case wantonly filed this petition to drag on the proceedings. Though, the petitioners raised the above said objections, the Trial Court allowed the petition on payment of cost Rs. 3,000/-. Therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned counsel appearing for the petitioners would contend that the petitioners are the plaintiffs in the main suit and the suit was filed for the relief of specific performance of contract. The said suit was posted for filing written statement on 12.10.2017. But the respondent has not filed written statement, thereby, *ex parte* decree was passed on 11.12.2017. Thereafter, the Execution Petition in E.P. No. 8 of 2019 was filed, where also, the respondent was set *ex parte*. Therefore, the respondent filed petition only to delay the proceedings but the Trial Court, without considering the delay tactics of the respondent, allowed the petition on payment of cost. Therefore, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondent would contend that the respondent is the defendant in the main suit and due to his non appearance and non filing of written statement, the Trial Court has passed *ex parte* decree

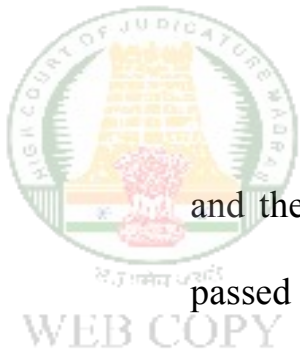


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on 11.12.2017 and immediately, he filed application to set aside the exparte decree and the same was returned and thereafter, the same was re-presented and then the petition was kept with the bundle and thereafter, the Court has assigned number only in the year 2021. Thereafter, the petition was heard by the Trial Court and allowed the petition. The reason stated by the respondent is that on the date of hearing, he went for condolence, hence he could not met his counsel to instruct to file the written statement. Thereafter, the respondent filed petition along with the written statement. Therefore, the petition was filed within the time. Therefore, the Trial Court has passed a reasoned order. Hence, the present Civil Revision Petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.

6. In this case, according to the petitioners, the Trial Court has not consider the case of the petitioners that there is no ground and no reason stated by the respondent for his non appearance and non filing of the written statement on the date of hearing and there is a delay in filing the petition and the same was not considered by the Trial Court. This Court also called for report from the Trial Court as about the petition filed for condonation of delay



and the Trial Court also filed report by stating that "after the *ex parte* decree passed by the Trial Court, the respondent has filed application to set aside the *ex parte* decree under Order IX Rule 13 on 10.01.2018 within the time, the said petition was returned for certain reasons, subsequently, the said petition was re-presented in time on 28.04.2018. Again the petition was returned and the same was re-presented on 30.07.2018, thereafter the petition was taken on file on 31.03.2021 in I.A. No. 1 of 2021. Thereafter, the petition was allowed on payment of cost of Rs. 3,000/- and the same was deposited into the Court." Therefore, the petition was filed in time as per the report filed by the Trial Court. The reasons stated in the affidavit is that on the date of hearing, the respondent was unable to appear due to condolence and thereafter, he approached his counsel and know about the stage of the case. Therefore, the reason stated by the respondent is genuine and acceptable one. In this context, the Trial Court also in the order observed that it is the duty of the Court to give an opportunity to the parties to defend their valid case, though, the petitioners have objected this petition, the Court should liberally approach in allowing the such kind of petitions and allowed payment of cost Rs. 3,000/-. Therefore, the abovesaid order passed by the Trial Court is a well reasoned order and it does not warrant interference.



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7. In view of the aforesaid discussions, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

01.08.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.



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P.DHANABAL, J.,

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