



C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

J.Santhanam

... Petitioner

Vs.

1.Achuthanarayanan

2.Valarmathi

3.S.Dinakaran

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 03.07.2024 passed in I.A.No.1 of 2023 in O.S.No.25 of 2018 by the learned Principal District Judge, Chengalpattu.

For petitioner

: Mr.K.Chandrasekaran

ORDER

The civil revision petition is filed by the second defendant in the suit against the conditional order passed on 03.07.2024 in I.A.No.1 of 2023 in O.S.No.25 of 2018 by the learned Principal District Judge,



C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

Chengalpattu, directing the petitioner to deposit the decretal amount of Rs.40 lakhs into the Court on or before 28.08.2024 while condoning the delay of 1531 days in filing the petition under Order 9 Rule 13 of Civil Procedure Code to set aside the ex-parte decree and judgment dated 01.04.2019 passed against the petitioner/second defendant in O.S.No.25 of 2018.

2.Learned counsel for the petitioner would submit that O.S.No.25 of 2018 has been filed by respondents 1 and 2/plaintiffs seeking a direction to the defendants to pay damages by way of compensation of Rs.40 lakhs to the plaintiffs with future interest of 12% per annum towards the death of their son on account of cement sunshade slab collapse. The 3rd respondent/first defendant is the building contractor and the petitioner/second defendant is the owner of the adjacent house building. Originally, the suit was filed at Vellore and taken up in O.S.No.11 of 2014 on the file of Principal District Court, Vellore, and the petitioner/second defendant had engaged a counsel to defend his case. Later on the ground of territorial jurisdiction, the case has been transferred to the Principal District Judge, Kancheepuram at Chengalpattu.



C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

3.The Principal District Judge, Kancheepuram at Chengalpattu, has taken the suit on file and renumbered as O.S.No.25 of 2018 and without any notice being sent from the transferee Court, an ex-parte decree dated 01.04.2019 came to be passed against the petitioner/2nd defendant and the 3rd respondent/1st defendant-Contractor. Thereafter, respondents 1 and 2/plaintiffs have filed E.P.No.48 of 2021 and only after receipt of the notice in the Execution Proceedings, the petitioner came to know about the ex-parte decree. The petitioner has filed an application in I.A.No.1 of 2023 in O.S.No.25 of 2018 seeking to set aside the ex-parte decree along with the petition to condone the delay of 1531 days. The trial Court having been convinced with the reasons adduced, allowed the petition and condoned the delay, however imposed a cost of Rs.40 lakhs and had directed the petitioner to deposit the said amount on or before 29.08.2024. Challenging the said order, the petitioner has filed the present civil revision petition.

4.The learned counsel for the petitioner would further submit that the condition imposed the Principal District Judge, Chengalpattu, directing the petitioner to deposit the entire claim amount is highly excessive, onerous and without any basis and in a way preventing the



petitioner to contest the suit and that the petitioner is ready to get along with the trial. He would also submit that without prejudice to his rights, the petitioner is ready and willing to deposit a sum of Rs.5 lakhs within a period of one week to show his bona fide and thereby would seek indulgence of this Court with regard to the condition imposed by the trial Court.

5.It is seen that the learned trial Judge, while condoning the delay of 1531 days in filing the petition to set aside the ex-parte decree passed against the petitioner/2nd defendant in O.S.No.25 of 2018, had directed the petitioner to pay a sum of Rs.40 lakhs. The learned counsel for the petitioner, without prejudice to his contentions, had offered to deposit a sum of Rs.5 lakhs within a period of one week. This Court is also of the view that the condition imposed by the trial Judge while setting aside the ex-parte decree insisting for deposit of entire decreetal amount is disproportionate, excessive, onerous and without any basis, thereby warranting interference by this Court.

6.Accordingly, the order passed in I.A.No.1 of 2023 in O.S.No.25 of 2018 is modified and the civil revision petition stands allowed in part.



C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

The petitioner is directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) before the trial Court within a period of one week from the date of receipt of a copy of this order. On such deposit being made, the exparte decree dated 01.04.2019 passed in O.S.No.25 of 2018 stands set aside. The petitioner shall file the written statement within one week from thereof. It is made clear that the petitioner shall co-operate for the speedy disposal of suit in O.S.No.25 of 2018. The trial Court shall take every endeavour to complete the trial within a period of six months from the date of restoration. No costs. Consequently, connected C.M.P. is also closed.

10.09.2024

Index: Yes/No
raa

To

1. The Principal District Judge, Chengalpattu.



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C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

A.D.JAGADISH CHANDIRA, J.

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**C.R.P. No.3669 of 2024 and
C.M.P. No.19913 of 2024**



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C.R.P. No.3669 of 2024 and C.M.P. No.19913 of 2024

10.09.2024