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C.R.P. No.3501 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3501 of 2022

and C.M.P. No.18638 of 2022

1. Ramani W/o. Jayapal
2. Jayapal S/o. Thangavel

... Petitioners / Petitioners / Defendants

Vs.

1. Swaminathan S/o. Gundan
 2. K. Mathew S/o. Gundan
- Plaintiffs

...Respondents / Respondents /

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.09.2021 passed in I.A. No.8 of 2020 in O.S. No.40 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Uthukottai.

For Petitioners : Mrs. G. Sumitra

For Respondents : Mr. R. Vasudevan

ORDER

The Civil Revision Petition is filed by the petitioners to set aside the order passed in I.A. No.8 of 2020 in O.S. No.40 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Uthukottai dated 29.09.2021, wherein the petitioners herein have filed an application to set aside the order



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passed against them on 20.12.2019 and the trial Court dismissed the application. Against which, the present civil revision petition is filed.

2. According to the petitioners, they are defendants in the main Suit filed by the respondents herein for the reliefs of declaration and cancellation of sale deed. The case was posted on 20.12.2019 for filing of written statement, but they were unable to appear before the Court due to their illness and ex parte order was passed against them. Therefore, the petitioners filed petition before the Trial Court to set aside the ex parte order passed against them, but the Trial Court dismissed the said application for want of petition under Section 5 of Limitation Act. Therefore, the order passed by the Trial Court is erroneous.

3. According to the respondents, they are the Plaintiffs in the main Suit filed for the reliefs of declaration and cancellation of sale deed. The petitioners have filed ex parte set aside petition beyond the period of 30 days and condone delay petition under Section 5 of Limitation Act is also not filed and therefore the Trial Court, by considering the said aspects, correctly dismissed the petition. Therefore, the order passed by the Trial Court is to be confirmed.



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4. Before the Trial Court, no oral or documentary evidence adduced on either side. The Trial Court after hearing both sides, dismissed the application.

5. The learned counsel appearing for the petitioners would contend that the respondents herein are the Plaintiffs in the main suit and on 20.12.2019, the petitioners were not able to appear before the Court and immediately they filed a petition under Order IX Rule 7 of Code of Civil Procedure to set aside the exparte order dated 20.12.2019. Thereafter, the matter was posted on various dates and after lifting of COVID lock down, on 29.01.2021, the petition was dismissed by the Trial Court for want of application under Section 5 of Limitation Act to condone delay in filing the said exparte order set aside petition and the same is erroneous. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondents would contend that when the matter was posted for filing written statement, the petitioners have not filed their written statement and they also failed to appear and hence the trial Court passed an exparte order, but the petitioners have filed a



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separate application after the limitation period and further they have also not filed any application under Section 5 of Limitation Act to condone delay in filing the exparte order set aside applicatin. Therefore the civil revision petition is liable to be dismissed.

7. Heard both sides and perused all the materials available on record.

8. On hearing upon both sides and perusing the records, it is seen that the Trial Court dismissed the application filed by the petitioners by observing that the petitioners have not stated valid reasons and not filed any application under Section 5 of Limitation Act. It is well settled law that as far as setting aside the exparte order is concerned, it only covered the period during which the party was absent and did not preclude him from proceedings with the Suit and at that stage, Order IX Rule 7 of Code of Civil Procedure does not prevent this but applies to the case when the party being set exparte wishes to be relegated back to the position which he would have been in, if he had appeared at previous hearing and had opportunities of contest the case etc., Further there is no limitation for filing a petition under Order IX Rule 7 of Code of Civil Procedure, thereby application under Section 5 of Limitation Act is not necessary. But the Trial Court failed to consider the same and



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dismissed the petition by holding that they have not filed any application under Section 5 of Limitation Act.

9. As far as the order passed in the application filed to set aside the exparte order under Order IX Rule 7 of Code of Civil Procedure is concerned, the Trial Court has erroneously dismissed the application for want of petition under Section 5 of Limitation Act, which is unsustainable. As far as the reasons stated by the petitioners for non-appearance is concerned, they stated that due to illness, they were unable to appear before the Court and the same is genuine and thereby, sufficient cause available to allow the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

10. It is brought to the knowledge of the Court that the petitioners have not filed any written statement before the Trial Court. Therefore, the Trial Court has to decide the same in accordance with law on merits. The learned counsel appearing for the respondents requested this Court to fix the time frame to dispose the main case.

11. Considering the nature of the Suit and considering the fact that the Suit is pending from the year 2019, it is appropriate to direct the Trial Court to conclude the trial within **6 (six) months** from the date of receipt of a copy of



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this order.

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12. With the above observations, this civil revision petition is allowed. The fair and decretal order dated 29.09.2021 passed in I.A. No.8 of 2020 in O.S. No.40 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Uthukottai is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

11.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

Note: Issue order copy tomorrow ie., **12.07.2024.**

To

The District Munsif cum Judicial Magistrate Court, Uthukottai.



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P.DHANABAL, J.,

mjs

CRP. No.3501 of 2022

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