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CRP No.4431 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMI NARAYANAN

CRP No.4431 of 2024 and CMP No.24691 of 2024

G.Jayashree

... Petitioner

Vs

S.Sakthivel

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Docket Order dated 20.06.2024 passed in I.A.No.5 of 2023 in O.S.No.32 of 2022 on the file of the Additional District Judge, Chengalpettu.

For Petitioner : Mr.K.Bharathi

ORDER

This Civil Revision Petition is filed at the instance of the plaintiff.

2. O.S.No.32 of 2022 is a suit presented for cancellation of the sale deed allegedly executed by power agent of the plaintiff in favour of the second



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defendant. Impugning the sale deed on several grounds, including non-payment of consideration, the suit came to be presented.

3. Summons were issued to the defendants. The Court also permitted private notice to be served on the parties. The private notice was returned as “refused”. Treating that as sufficient service, the second defendant was set *exparte*. The second defendant pleads that he came to know about the pendency of the suit only on a police complaint that was lodged against him by the plaintiff. He presented an application to set aside the *exparte* order dated 10.08.2022 along with the written statement dated 28.04.2023. Notice was ordered to the plaintiff. After hearing both sides, the said application was allowed on payment of cost of Rs.2,000/-. Impugning the same, the present revision.

4. Heard Mr.K.Bharathi, learned counsel for the revision petitioner. He urges that the respondent has approached the Court with unclean hands. He invites my attention to the returned cover, enclosed at Page No.51 of the typed set of papers to show that on 28.02.2022 when delivery was attempted on the second defendant, he refused to receive the same. Therefore, he wants to treat



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this notice as proper notice on the second defendant. He further pleads that without payment of a single paisa, the second defendant had knocked off the property of the plaintiff which is worth several crores. Finally, he points out that though the Court ordered the application on payment of Rs.2,000/- on or before 19.06.2024, the second defendant did not make payment to the plaintiff's account, but had made payment to the account of Mr.Gokulakrishnan, the husband of the plaintiff by way of G-pay. He further urges the said Gokulakrishnan had returned the amount on 20.06.2024 and it was only on 24.06.2024 the said amount was sent to the plaintiff's G-pay account. Therefore, he pleads that there is non-compliance with the conditional order passed by the Trial Court and hence, recording in the order by the Trial Court that on 20.06.2024 the amounts have been paid is erroneous and deserves to be set aside.

5. I have carefully considered the submissions of Mr.K.Bharathi.

6. There is no dispute that the case relates to the important issues of title as well as possession over an immovable property, which both the plaintiff and the defendants consider valuable. The second defendant has been set *exparte*



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on the basis of a private notice. The court is entitled to order private notice and if it is refused, it is the duty of the plaintiff to examine the postman concerned to prove that it has been tendered to the second defendant and it was he who refused to receive the same. No such evidence is on record.

7. In terms of Order V of the Code of the Civil Procedure Code, if summons are refused, it demands that the person, who attempted to serve the summons, should be examined. Only thereafter, the Court would have to be convinced that the person, to whom the summons has been sent, has deliberately refused to receive the summons and thereafter, pass the consequential orders.

8. With respect to the default in payment of Rs.2,000/-, there is no dispute that the respondent had sent the amount to the G-pay account of the husband of the plaintiff. It was not returned immediately, but, one day after the last day that had been fixed by the Court. To make it clear that the amount should be paid on or before 19.06.2024, the amount has been sent to the husband's account on 18.06.2024 and it was returned to the second defendant only on 20.06.2024. Therefore, there is substantial compliance of the order



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passed by the trial court dated 06.04.2024.

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9. The plea of Mr.K.Bharathi could have been considered had this been a case of Section 5 of Limitation Act which demands “sufficient cause”. Order IX Rule 7 only requires “good cause”. It has been interpreted by the Supreme Court in *Sangram Singh vs Election Tribunal AIR 1955 SC 425*, that applications under Order IX Rule 7 deserve liberal interpretation.

10. In the facts of the case, the learned Judge has exercised his discretion and has permitted the parties to contest the proceedings since valuable rights of immovable properties are involved. On account of the litigation in peripheries, the proceedings in the meat of the matter is being delayed.

11. Since the learned Trial Judge has exercised his discretion, I am not inclined to interfere in the revision.

12. As pointed out by Mr.K.Bharathi, as written statement has been filed, the trial Court shall take up the suit in O.S.No.32 of 2022 for expeditious



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disposal, subject to the disposal of Order VII Rule 11 of Civil Procedure Code,
within a period of nine months from the date of receipt of a copy of this order.

13. With the time limit above ordered, the civil revision petition is
dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

Index: Yes/No
Speaking order/Non-speaking order
sr

To

The XI Assistant Court, (XII Assistant Court, FAC),
City Civil Court, Chennai.



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V.LAKSHMINARAYANAN,J.,

sr

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