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C.R.P.(NPD).No.328 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.328 of 2023
and C.M.P.No.2757 of 2023

T.Alagammai

... Petitioner

VS

V.Senthilnathan

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 26.08.2022 in I.A.No.1 of 2021 in O.S.No.6762 of 2013 on the file of the XII Assistant City Civil Court, Chennai.

For Petitioner : Mrs.A.L.Ganthimathi
Senior Counsel
for M/s.A.G.Abhishek

For Respondent : Mr.AR.M.Arunachalam

ORDER

This Civil Revision Petition arises against the order of the XII Assistant City Civil Court, Chennai in I.A.No.1 of 2021 in O.S.No.6762 of 2013, dated 26.08.2022.



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2. O.S.No.6762 of 2013 is a suit for declaration that the plaintiff and his successors-in-interest are entitled to use the 'D' schedule property to their convenience as per the Sale Deed dated 14.05.1982 registered in Document No.1456 of 1982 and for the relief of permanent injunction restraining the defendant etc., from interfering with the plaintiff's right of parking motor vehicles in and over the 'D' schedule property.

3. The case of the plaintiff is that on 14.05.1982, he had purchased the suit 'C' schedule mentioned property from the same vendor from whom the defendant had also purchased the same. As per the Sale Deed, the plaintiff is permitted to use the suit 'D' schedule mentioned property to his convenience. On 08.12.2013, the defendant restrained the plaintiff from using the 'D' schedule mentioned property and hence, he came forward with the suit.

4. On being served with the summons, a detailed written statement was filed by the defendant. The defendant would plead that the plaintiff only has a limited right of way and does not have the right to use the same as per his convenience.



5. On the basis of these pleadings, the parties went for trial. When the suit was taken up for hearing on 03.02.2016, the plaintiff was not present and noting that his absence had been continuous, the learned XII Assistant Judge, City Civil Court, Chennai, dismissed the suit for default. Subsequently, an application was filed for restoration together with condonation of delay. Both the applications were allowed. It was consequent to the learned counsel, Mr.Rajiv Gandhi, who appeared on behalf of Mr.L.Palanimuthu, tendered 'no objection for restoration'.

6. After restoration of the suit, since the plaintiff yet again absented himself, the suit was dismissed for default on 24.11.2016. Yet again, an application was filed to restore the suit and promptly Mr.Rajiv Gandhi, endorsed “no objection”. After restoration of the suit, it came to be decreed *exparte* on 15.12.2017. Nothing transpired between 2017 till 04.10.2021. On 04.10.2021, the plaintiff attempted to put up a construction to have access his property. This was objected by the defendant. The plaintiff immediately produced the copy of the judgment and decree in the suit and reported that, as the Court had granted him a decree, he was entitled to utilise the same as per



his convenience.

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7. It was then that the defendant pleads she came to know about the *exparte* decree. Immediately, she rushed to the office of the counsel to verify the status of the suit. It was at that stage, that the counsel on record came to know that Mr.Rajiv Gandhi, the Junior Counsel, had made an endorsement of “no objection” and the suit stood restored.

8. The defendant thereafter, took out an application stating that she was not informed about the restoration of the suit and would plead that had she been informed, she would have diligently followed up the suit. She would state that the plaintiff, though having obtained a decree for usage, was trying to put a construction over the 'D' schedule mentioned property, which is even against the prayer in the suit. This application was received as I.A.No.1 of 2021 and notice was ordered in this application.

9. The fact that Mr.Rajiv Gandhi had endorsed “no objection” was accepted by the plaintiff. The plaintiff further stated that there were other



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counsels attached to the office of the counsel on record and they will consciously following the suit. He would state that the averments made in Paragraph No.4 of the affidavit are false. He would plead that he had the benefit of the decree for over 3 ½ years and therefore, the delay ought not to be condoned.

10. The learned Trial Judge came to the conclusion that there was no sufficient cause and consequently, dismissed the petition. Against the said order, the present Civil Revision Petition arises.

11. Heard Mrs.A.L.Gandhimathi, learned Senior Counsel appearing for M/s.A.G.Abhishek and Mr.AR.M.Arunachalam, learned counsel appearing for the respondent.

12. A perusal of the aforesaid facts would go to show that the suit itself came to be restored only on account of the “no objection” that had been tendered by the Junior Counsel attached to the office of the defendant. The defendant did not receive the notice in person but constructively received it through the office of the Advocate engaged by her.



13. Technically, Mr.Arunachalam is right in his argument that notice to the counsel amounts to notice to the party. But I have to take into consideration the normal course of events. If the suit is restored, there is a possibility that the party would not have been informed. Under such circumstances, the explanation given by the civil revision petitioner has a ring of genuineness around it. Furthermore, at the stage of cross examination, it is not as if the party is going to be present and give instructions to the counsel at every stage. The mistake of the counsel cannot be laid at the doors of the party. The plaintiff claims by virtue of a Sale Deed, all that remains to be considered by the Court below is a simple application of the schedule to the Sale Deed to the suit.

14. The Supreme Court in cause title plead ***AIR 1981 SC 1400*** held that the mistake of the counsel should not have disastrous visit disaster consequences on the party. A party engages a counsel hoping that he will perform his duty diligently and the counsel cannot be present in all Courts at the same time and obviously would rely upon the Junior Counsel, as in the present case.



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15. In the light of the principles laid down by the Supreme Court, I find sufficient cause on account of the fact that the suit was restored without notice to the defendant. However, taking into consideration that the plaintiff has been agitating the suit for more than 11 years, I would condone the delay on the condition that the defendant pays a sum of Rs.27,500/- to the plaintiff within a period of two weeks from the date of receipt of copy of this order.

16. As the plaintiff has been enjoying the benefit of usage of the 'D' schedule mentioned property for the past 3 ½ years, the parties shall maintain *status quo* till disposal of the suit with respect to the 'D' schedule.

17. The learned Judge on confirmation that a sum of Rs.27,500/- has been paid by the defendant to the plaintiff within the period aforesaid, shall number the application under Order IX Rule 13 of the Code of Civil Procedure and allow the same.

18. The undertaking by both sides that they shall maintain *status quo* as on today is recorded.



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19. The learned XII Assistant City Civil Court, Chennai is requested to take into consideration that the suit has been for the past 11 years and give it the appropriate treatment that it requires and dispose of the same as expeditiously as possible within a period of six months from the date of setting aside the *exparte* decree.

20. In fine, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The XII Assistant City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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