



C.R.P. No.3732 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3732 of 2022

and C.M.P. No.19684 of 2022

R. Manoranjitham (died)

1. A.V. Ramanan S/o. Veerasamy Reddiar

2. Senchulakshmi D/o. Veerasamy Reddiar

3. Menakalakshmi W/o. Aswin Kumar

4. R. Menakarani D/o. A.V. Ramanan

5. R. Yogajothi S/o. A.V. Ramanan ... Petitioners / Respondents / Plaintiffs
/ Petitioners

Vs.

Gajapathy S/o. Kottai Ramasamy

...Respondent / Petitioner /

1st Defendant / Respondent.

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.08.2022 passed in I.A. No.1 of 2019 in I.A. No.320 of 2019 in O.S. No.48 of 2017 on the file of the Sub Court, Madurantagam.

For Petitioners : Mr. K. Govi Ganesan

ORDER

The Civil Revision Petition has been preferred as against the order passed in I.A. No.1 of 2019 in I.A. No.320 of 2019 in O.S. No.48 of 2017, wherein the petitioners herein have filed a petition before the Trial Court to



C.R.P. No.3732 of 2022

direct to respondent to file affidavit and produce the documents in I.A. No.320 of 2019. The Trial Court dismissed the said petition and against which, the present Civil revision petition is filed.

2. According to the petitioners, they are Plaintiffs in the main Suit and they filed the Suit for declaration and permanent injunction and the respondent herein, being one of the defendants, has not filed any written statement and thereby, the Trial Court has passed ex parte decree as against the defendants. Thereafter, the respondent herein, with other defendants, has filed a petition to condone delay of 237 days in filing the ex parte decree set aside petition in I.A. No.320 of 2019, wherein the petitioners have not produced any documents. Therefore, the petitioners in I.A. No.320 of 2019 have to be directed to file affidavit and mark the documents as per Rule 32 of Civil Rules of Practice. To that effect, the petitioners have filed the petition in I.A. No.1 of 2019 and the same was dismissed by the Trial Court. Therefore, they have filed this civil revision petition.

3. According to the respondent, the petitioners have filed the main Suit for the relieves of declaration and permanent injunction and the same was decreed as ex parte, since the defendants had not appeared before the Trial



C.R.P. No.3732 of 2022

Court and filed written statement. There was a delay of 237 days in filing a petition to set aside ex parte decree and therefore, they filed a petition under Section 5 of Limitation Act to condone delay of 237 days. When the application was posted for enquiry, the petitioners herein have filed a petition in I.A. No.1 of 2019 to direct the petitioners therein to file affidavit and mark documents. The petitioners in I.A. No.320 of 2019 have to decide what kind of evidence to be adduced and the respondents cannot direct the petitioners to conduct the case in a particular manner. Therefore, the Trial Court dismissed the application.

4. The learned counsel appearing for the petitioners would contend that the petitioners have filed a Suit for the relieves of declaration and permanent injunction, wherein the respondent herein and other defendants have not filed written statement and thereby, they had been set ex parte and an ex parte decree was passed against them. To set aside the ex parte decree, they have not filed any application in time, thereby they filed an application under Section 5 of Limitation Act to condone delay of 237 days in filing the ex parte decree set aside petition. In that application, the petitioners herein have filed a petition to direct the petitioners therein to file an affidavit and documents under Rule 32 of Civil Rules of Practice, but the Trial Court dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set



aside.

5. The learned counsel appearing for the respondent would contend that the respondent herein and other defendants, who are the petitioners in I.A. No.320 of 2019, have to decide that what kind of evidence has to be adduced and the respondents therein cannot direct the petitioners to conduct the case in a particular manner. The petitioners herein have filed an application to direct the petitioners therein to file an affidavit in the said I.A. No.320 of 2019 and to mark the documents and the same was correctly dismissed by the Trial Court. It is for the Court to decide that petitioners have proved their case in accordance with law and even as per Rule 32 of Civil Rules of Practice, the Court, if satisfies, then can direct the petitioners to file affidavit and mark documents. Therefore, it is for the Court to decide the same and the respondents cannot seek to direct the petitioners to file affidavit and documents. Therefore the Trial Court dismissed the petition and hence the civil revision petition is liable to be dismissed.

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

7. In this case, there is no dispute that the respondents herein have filed a petition to condone delay of 237 days in filing exparte decree set aside



C.R.P. No.3732 of 2022

petition passed against them and in that petition, they have to substantiate their contention and it is for them to prove their case in the manner known to law and therefore, the respondents cannot compel them to file affidavit and mark the documents. If the petitioner failed to adduce evidence and mark documents on his side, then it is for the Trial Court to decide the same based on the materials on merits and the respondent can agitate before the Trial Court at appropriate time in accordance with law.

8. Rule 32 of Civil Rules of Practice reads as follows:-

"Any fact required to be proved upon an interlocutory proceeding shall, unless otherwise provided by these rules, ordered by the Court, be proved by affidavit, but the Judge may in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded and exhibits marked, in the same manner as in a Suit and lists of the witnesses and exhibit shall be prepared and annexed to the judgment".

Therefore, the respondents cannot compel the petitioners to file affidavit and mark documents and it is for the Court to decide that whether the contentions of the petitioners are sufficient and the delay has been properly explained or not. Therefore, the Trial Court in its order, after elaborate discussion, correctly held that the petition is not maintainable and the same was dismissed. The order passed by the Trial Court is a reasoned one and in accordance with law. Thereby, it does not warrant any interference.



C.R.P. No.3732 of 2022

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9. In view of the above said discussions, this Court is of the opinion that the civil revision petition has no merits and deserves to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.07.2024

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

To

The Sub Court, Madurantagam.



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C.R.P. No.3732 of 2022

P.DHANABAL, J.,

mjs

CRP. No.3732 of 2022

12.07.2024