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C.R.P. No.3799 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3799 of 2022

and C.M.P. No.19991 of 2022

D. Karthi S/o. Late Dhandapani

Respondent / Plaintiff /
...Petitioner /

Vs.

S. Parvathi W/o. S. Selvaraj Petitioner / Defendant / Respondent

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.07.2022 made in I.A. No.396 of 2021 in O.S. No.627 of 2012 on the file of Principal Sub Court, Tiruppur.

For Petitioner : Mr. Ashwin Kumar

For Respondent : Mr. D. Raghu

ORDER

The Civil Revision Petition is filed by the petitioner challenging the order passed in I.A. No.396 of 2021 in O.S. No.627 of 2012 on the file of Principal Sub Court, Tiruppur dated 13.07.2022, wherein the respondent herein has filed a petition before the Trial Court to condone delay of 3085



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days in filing exparte set aside petition and the same was allowed on payment of cost of Rs.8,000/-. As against the said order, the present civil revision petition has been filed.

2. According to the petitioner, he is the Plaintiff in the Suit and he filed the Suit for the relief of specific performance of contract and on the date of agreement itself, the possession of the property was handed over to the petitioner and both the petitioner and the respondent entered into an agreement of sale on 15.02.2011 and the sale consideration was fixed at Rs.3 lakhs and he received a sum of Rs.2,90,000/- as sale consideration advance on the date of agreement itself and the balance amount of Rs.10,000/- has to be paid within a period of 2 years from the date of agreement. Thereafter, the respondent failed to perform the above condition of contract and thereby, the petitioner filed a Suit for specific performance and the same was decreed on 02.03.2013. The respondent herein has not contested the case and he was set exparte and exparte decree was passed on 02.03.2013. Thereafter, the respondent has filed a petition before the Trial Court to condone delay of 3085 days under Section 5 of Limitation Act and the same was allowed by the Trial Court. According to the petitioner, the respondent has not stated any reason for condoning the delay of 3085 days, but the Trial Court failed to consider the same and allowed the petition.



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3. According to the respondent, the petitioner herein has filed the Suit for specific performance of contract and the same was decreed as exparte since the respondent was unable to appear before the Court on the particular date. Therefore, there was a delay of 3085 days in filing the exparte decree set aside petition before the Trial Court and the respondent filed a petition to set aside the exparte decree and to condone delay of 3085 days and the said petition was allowed by the Trial Court. The respondent is illiterate and summons was not served on the respondent. The petitioner obtained exparte decree as if summons served on the respondent. Since the respondent had no knowledge about the case and she was unable to appear before the Court, she filed a petition to condone the delay of 3085 days in filing exparte decree set aside petition. Further her husband was affected by fracture in his legs and thereby, he was unable to move and therefore, she had to take care of him. Hence, there was a delay of 3085 days in filing exparte decree setaside petition. The Trial Court, after considering the same, allowed the petition. Moreover, the petitioner has not filed any counter and therefore, the Trial Court allowed the petition on payment of cost. Therefore, the order passed by the Trial Court is in order.

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 petitioner would contend that the petitioner has filed the main Suit for the relief of specific performance of contract and the said Suit was decreed in his favour on 02.03.2013. The respondent had not contested the case and therefore, she was set exparte and thereafter she filed the impugned petition and on the date of agreement itself, the possession of the property was handed over to the respondent and she is in enjoyment and possession of the Suit property. The respondent has filed the petition to condone delay of 3085 days without any valid reasons and the reasons stated by the respondent is not acceptable, but the Trial Court failed to consider the above aspects and allowed the petition on payment of cost of Rs.8,000/-. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the respondent has not received any summons and she is illiterate and her husband was affected by fracture in his legs and she was in position to take care of her husband and she did not know about the case and therefore, there is a delay of 3085 days in filing the petition and the respondent filed condone delay petition, for which the petitioner has not filed any counter and thereby,



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the Trial Court allowed the petition on payment of cost of Rs.8,000/-.

Therefore, the order passed by the Trial Court is in order.

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

8. On hearing both sides and perusing the records, it is observed that the petitioner has filed the Suit for specific performance of contract and the respondent was set exparte in the Suit and an exparte decree was passed on 02.03.2013. According to the respondent, no summons was served on her and she is illiterate and further, her husband was suffering from fracture in both of his legs and hence she was unable to appear before the Court and therefore, there was a delay of 3085 days in filing the exparte decree set aside application and the respondent filed petition to condone delay of 3085 days in filing the exparte decree set aside application. The petitioner has not filed any counter in that application. Therefore, the Trial Court allowed the petition by accepting the reasons stated by the respondent in the affidavit. According to the petitioner, the respondent has not stated any valid reasons. This Court perused entire records and it is seen from the records that the respondent has stated in the petition in I.A. No.396 of 2021 that summons was not served on her and also her husband was unwell and thereby she was taking care of her husband and also she is illiterate and she does not know anything about the



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case and now only, she came to know about the case and therefore, she filed the petition. The reasons stated by the respondent have not been supported by any records, but at the same time, the petitioner has not filed any counter in the condone delay petition. In the absence of counter to deny the allegations made in the affidavit, it is appropriate to allow the application, since it is deemed to be admitted.

9. During the pendency of the petition, this Court called for report from the trial Court as to the status of the case and the Trial Court filed the report. On perusal of the report, this Court observed that after allowing the condone delay application filed by the respondent, the exparte decree set aside petition under Order IX Rule 13 of Code of Civil Procedure was filed by the respondent and the same was numbered in I.A. No.2 of 2022 in O.S. No.627 of 2012 and the respondent in that application, has not filed any counter and the same was allowed on payment of Rs.2,000/- through order dated 23.11.2022. Thereafter, the cost was paid before the Court and memo was recorded. In the meanwhile, this Court, in this application stayed further proceedings. The petitioner herein has not contested the petition filed under Order IX Rule 13 of Code of Civil Procedure and not filed any counter and he was set exparte. Therefore, the petitioner is in habit of prolonging the case



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without filing counter. The Trial Court also considering the nature of Suit and the reasons stated by the respondent, allowed the petition on payment of cost of Rs.8,000/- and the cost was also deposited in the Court. Hence there is no infirmity or perversity in the order passed by the Trial Court and it does not warrant interference. Therefore, this Court declined to entertain this petition. However, the Suit is filed in the year 2012 and the same is pending for more than 10 years and therefore, it is appropriate to direct the respondent to deposit a sum of Rs.3 lakhs before the Trial Court within **4 (four) months** from the date of receipt of a copy of this order.

10. With the above observations, this civil revision petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

02.07.2024

Index : Yes/No

Speaking order/non-speaking order

mjs

To

The Principal Sub Court, Tiruppur.



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P.DHANABAL, J.,

mjs

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