



C.R.P.No.4024 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.4024 of 2019
and
C.M.P. No.26418 of 2019

Selvam S/o. Veerannan

... Petitioner

vs.

Ambalavanar Arapporupu Ayyam,
represented by its Secretary W.N. Thirunavukkarasu,
having office at Walajabad, Kanchipuram District.
[W.N.Thirunavukkarasu is substituted in the place of
P. Radhakrishnan vide order dated 11.12.2023 in
C.M.P.No.26290 of 2023]

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 17.08.2019 made in I.A. No.795 of 2016 in O.S. No.47 of 2012 on the file of the learned Principal Subordinate Judge, Kanchipuram.

For Petitioner : Mr. G. Jeremiah

For Respondents : Mr. P. Ebenezer Paul



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner to condone delay of 1358 days in filing petition to set aside the exparte decree.

2. The respondent herein filed a Suit for recovery of possession and arrears of rent against the petitioner and the same was decreed exparte on 11.09.2012. Thereafter, the petitioner filed an application to set aside the exparte decree along with instant application with a delay of 1358 days. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that no suit summon was served on him and hence the exparte decree passed against him should be set aside on that ground. The non-service of suit summon was pleaded as a ground for approaching the Court.

3. The Trial Court on perusal of the records found that the private notice sent to the petitioner was returned with an endorsement “unclaimed-intimation delivered” and hence the substituted service by paper publication



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was ordered and the petitioner was set exparte.

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4. Merely because the private notice sent to the petitioner was returned with an endorsement “unclaimed-Intimation delivered”, the Trial Court ought not to have ordered paper publication. In the main order, there is no reference about the fate of Court notice. It is settled law that an endeavour shall be made to effect personal service on the defendant before going for the substituted service that too on satisfaction of Court, regarding evasion of service by the defendant. Though, in the case on hand, the respondents claimed that notice was taken to the address of the petitioner mentioned in the registered sale deed, the impugned order only referred about the return of the private notice with an endorsement “unclaimed-intimation delivered”. It is not the case of the respondent that notice was refused by the petitioner. It is also not clear that how many times, notice was taken to the petitioner before effecting substituted service. The fate of Court notice was also not considered by the Trial Court and the substituted service was ordered only based on the return of private notice with an endorsement “unclaimed-Intimation delivered”. In such circumstances, this Court feels that no proper steps have been taken to effect personal service on the petitioner before



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setting him exparte and accordingly, the petitioner has shown sufficient cause for delay in approaching the Court with this petition.

5. In view of the above discussion, the Civil Revision petition stands allowed on condition that the petitioner shall deposit a sum of Rs.25,000/- to the credit of O.S. No.47 of 2012 on the file of learned Principal Subordinate Judge, Kancheepuram within a period of 4 weeks from the date of receipt of copy of this order. The said sum to be deposited by the petitioner is subject to the result of the Suit. In case, the petitioner failed to deposit the amount, the Civil Revision Petition stands automatically dismissed without further reference to this Court. No costs. The connected miscellaneous petition is closed.

18.03.2024

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

The Principal Subordinate Judge, Kanchipuram.

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S.SOUNTHAR, J.

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