



C.R.P.NPD.No.1126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.NPD.No.1126 of 2023

and

C.M.P.No.7874 of 2023

Sulochana

... Petitioner/Defendant

Vs

Sivakumar

... Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Fair and Decretal Order of the learned Subordinate Judge, Omalur, Salem District, dated 26.09.2022 in I.A.No.2 of 2021 in I.A.No.186 of 2018 in O.S.No.395 of 2018.

For Petitioner : Mr.A.Anburaj

For Respondent : Mr.T.S.Vijayaraghavan



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ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order dated 26.09.2022 in I.A.No.2 of 2021 in I.A.No.186 of 2018 in O.S.No.395 of 2018 on the file of the Subordinate Judge, Omalur, Salem District.

2. The defendant in O.S.No.395 of 2018 is the petitioner herein and the suit was filed for specific performance. After filing the written statement, since the defendant did not appear before the trial Court, an ex-parte judgment and decree came to be passed on 12.09.2014. Thereafter, the respondent/plaintiff filed E.P.No.99 of 2015 before the Subordinate Court, Mettur. On receipt of the notice in the execution proceedings, the petitioner/defendant came to know about the *ex-parte* decree. Subsequently, the petitioner had filed I.A.No.186 of 2018 under Section 5



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of the Limitation Act to condone the delay of 448 days in filing the petition to set aside the ex-parte decree. The trial Court, by order dated 07.09.2018, had allowed the petition, imposing costs of Rs.1,000/- to be paid by the petitioner on or before 25.09.2018. However, since the cost was not paid within the stipulated time, the trial Court had dismissed I.A.No.186 of 2018. Thereafter, the petitioner had filed I.A.No.2 of 2011, seeking to condone the delay of 1 year 3 months in paying the said costs of Rs.1,000/-. However, the trial Court by order dated 26.09.2022, had dismissed the same, against which, the present revision has been filed.

3. Learned counsel for the petitioner submitted that due to miscommunication between the petitioner and his counsel, the costs of Rs.1,000/- could not be paid to the respondent within the time fixed by the trial Court. He further submitted that since the suit is one for specific performance and if an opportunity is not given to the petitioner, his right to contest the case would be defeated.



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4. Learned counsel for respondent submitted that, originally, the suit was filed on the file of the Sub-Court, Mettur in O.S.No.395 of 2018. Thereafter, it was transferred to Sub-Court, Omalur, and it was re-numbered as O.S.No.395 of 2018. The learned counsel prayed that this Civil Revision may be allowed on terms.

5. Heard the learned counsel on both sides and perused the materials available on record.

6. Taking into consideration the above submissions made by the learned counsels, this Court is of the opinion that, in the interest justice, one final opportunity can be granted to the petitioner. Accordingly, the Civil Revision Petition is allowed, setting aside the impugned order and the matter is remitted back to the trial Court for fresh consideration on condition that the petitioner deposits a sum of Rs.10,000/- (Rupees ten thousand only) to the credit of O.S.No.395 of 2018 within a period of two



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weeks from the date of receipt of a copy of this order. On such deposit being made, the trial Court shall disburse the amount to the respondent / plaintiff. The learned Subordinate Judge, Omalur is directed to complete the trial within a period of 6 months from the date of receipt of a copy of this order. In the event of the petitioner not co-operating for trial, the learned Judge shall pass orders on the suit itself on merits and in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.09.2024

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

To

1. The Subordinate Judge,
Omalur,
Salem District.
2. The Section Officer,
V.R.Section,

5/7



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A.D.JAGADISH CHANDIRA, J.,
srn

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