



C.R.P.(NPD)(MD) No.637 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD) No.637 of 2020

Mercy Richard (Died)

1.L.Irudhayasamy

2.I.Sesuraj

... Petitioners/Petitioners/
Defendants 2 & 3

*[Cause title accepted vide order dated 26.02.2020 made in C.M.P.
(MD) No.1675 of 2020 in C.R.P.(MD) SR No.13916 of 20219]*

Vs.

1.A.Karuppayiammal

2.M.Amaravathi

3.A.Palanichamy

4.G.Palaniammal

5.Ramuthai

6.M.Subbaiyan

7.M.Tamilarasan

8.M.Veerachamy

... Respondents/
Respondents/Plaintiffs



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Prayer: Petition filed under Article 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 11.01.2019 passed in I.A.No.936 of 2016 in O.S.No.401 of 2014 on the file of the Court of Principal District Munsif, Dindigul.

For Petitioners : Mr.S.Anand Chandrasekar

For RR1 to 5, 7 & 8: Mr.G.Anto Prince

For R6 : No appearance

ORDER

This Civil Revision Petition is directed against an order dated 11.01.2019 passed in I.A.No.936 of 2016 in O.S.No.401 of 2014 on the file of the Court of the Principal District Munsif, Dindigul.

2. The said application was filed under Section 5 of the Limitation Act, 1963, seeking condonation of the delay of 508 days in filing an application under Order IX Rule 13 of the Code of Civil Procedure seeking to set aside the ex-parte decree dated 30.03.2015 passed in O.S.No.401 of 2014.



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3. This Court, having heard the learned counsel for the petitioners and the learned counsel for Respondents No.1 to 5, 7 and 8, perused the order under revision. There cannot be any exception for the reasoning given by the learned trial Court for declining to condone the delay of 508 days. But, while declining to condone the delay or to shut the doors to the parties on technicalities, the Courts are expected to have a cursory look into the merits of the case as well. Mere failure to show sufficient cause for condoning the delay itself shall not result in shutting the doors of Courts of justice to the litigants. But from the order under revision, there is nothing to indicate that the learned trial Court applied its mind to the merits of the case on hand.

4. This is a case where the respondents filed the suit for declaration of title and injunction in respect of three items of suit schedule property basing upon a registered sale deed executed by Defendant No.1.

5. It is the contention of the petitioners herein that Item No.2 of the suit schedule property is not one among the properties that are conveyed in



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favour of the respondents/plaintiffs. But erroneously, the respondents herein have included the said item of property also in the suit schedule and thereby, claiming title over the same. Further, learned counsel for the petitioners also contended that they have no objection in respect of Item Nos.1 and 3 of the suit schedule property and they are not contesting the decree passed in the main suit in respect of those two items of the property.

6. This Court having taken note of the said contention, called for the record pertaining to the suit and perused the entire material on record. This Court, on perusing the judgment and decree passed in O.S.No.401 of 2014, is totally dissatisfied with the manner in which the said decree was passed. It is only on the ground that the petitioners/defendants remained ex-parte, the learned trial Court proceeded to pass a decree without application of mind in a mechanical manner. For passing that type of judgments, a Judicial Officer is not required. It is a clerical rather a ministerial job, which can be attended by the persons, who will normally draft the decree. This Court perused the judgment as well as the decree. There is hardly any difference between the judgment passed by the Court and the decree drafted



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by the ministerial staff. Such an approach is not expected from a Judicial Officer discharging judicial function. Even if the defendants remained ex-parte, it is the duty of the Court to look into the case set up by the plaintiff and it is only on satisfying that the plaintiff has made out a case for passing a judgment in his favour, the Court shall proceed to pass judgment. Mere failure of the defendant to contest the suit would not automatically result in passing a decree in favour of the plaintiff.

7. Under the above circumstances, this Court mostly guided by the manner in which the judgment is passed in O.S.No.401 of 2014 and is of the considered view that it is a fit case where this Court is duty bound to exercise its jurisdiction under Article 227 of the Constitution of India to thwart failure of justice on technicalities and to afford an opportunity to the parties herein. Though this Court is convinced with the reasoning given by the learned trial Court in refusing to condone the delay in the light of the manner in which the ex-parte judgment was passed by the learned trial Court in O.S.No.401 of 2014, this Court is inclined to set aside the order under revision duly condoning the delay of 508 days in filing an application under Order IX Rule



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13 of the Code of Civil Procedure in exercise of the power conferred under Article 227 of the Constitution of India.

8. My above view is fortified by the judgment of a learned Single Judge of this Court, wherein same view was taken by the learned Judge in the case of ***R.Stella vs. V.Antony Francis*** reported in ***2019 SCC OnLine Madras 24941***. The relevant paragraphs from the said decision read as under:

“15. This Judgment suffers from two patent illegalities. The first illegality is that the Judgment is not in conformity with Order XX Rules 4 & 5 of the Civil Procedure Code, and it is apparently, on the face of it illegal. The second illegality is that the Judgment does not even say what is the balance amount that has to be deposited by the plaintiff. There is no indication to show that the Court had taken into consideration the so called payment of a sum of Rs. 4,50,000/- claimed to be paid by the plaintiff to Ashok Kumar Chordia. There is absolutely no proof for the said payment and the Court has also not given any findings regarding the same. The minimum requirement for a suit for specific performance, namely, the readiness and willingness that requires to be proved,



has not even been dealt with in the judgment.

16.

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19. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the ex parte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the ex parte decree. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties.

20.

21. This Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is exercising



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superintendence over all the Courts and tribunals throughout the State. This Court cannot turn a blind eye when its attention is drawn to an ex facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.”

9. Accordingly, the order under revision is set aside and consequently, I.A.No.936 of 2016 in O.S.No.401 of 2014 on the file of the Court of the Principal District Munsif, Dindigul is allowed, insofar as Item No.2 of the suit schedule property alone is concerned. The decree as passed in respect of Item Nos.1 and 3 of the suit schedule properties shall be final, in view of the concession made by the learned counsel for the petitioners on behalf of the petitioners.

10. In the result, this Civil Revision Petition is allowed. No costs.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Principal District Munsif,
Dindigul.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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