



C.R.P.(MD)No.2819 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2819 of 2023

and

CMP (MD) No.14672 of 2023

Perumal : Petitioner/Plaintiff/
Revision Petitioner
Vs.

1.A.Sahayaraj
2.Santhi : Respondents/Defendants/
Respondents

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 14/07/2023 in IA No.803 of 2022 in OS No.38 of 2014 on the file of the IV Additional District Judge, Madurai.

For Petitioner : M/s.AL.Gandhimathi
Senior Counsel
for Mr.C.Mahadevan

For Respondents : No appearance

O R D E R

This civil revision petition has been filed seeking to set aside the order and decreetal order, dated 14/07/2023 passed in IA No.803 of 2022 in OS No.38 of 2014 on the file of the IV Additional District Judge, Madurai.



2. The facts in brief:-

The suit in OS No.38 of 2014 was filed by the petitioner herein as plaintiff seeking the relief of specific performance, directing the respondents herein to execute a sale deed, after receiving the balance sale consideration. The defendants, even though appeared through Advocate, failed to file written statement. So, they were set *ex-parte*. After the evidence of the plaintiff, the suit was decreed as prayed for with costs, by judgment, dated 10/04/2015. To set aside, the *ex-parte* decree, petition was taken up by the respondents herein in IA No.803 of 2022 along with the application to condone the delay of 2710 days. That came to be allowed by the trial court on payment of costs.

3. Against which, this civil revision petition is preferred.

4. In the affidavit, defendants have stated that threat was made by the plaintiff not to contact their Advocate, so on that account, they could not contact their Advocate and later, corona pandemic period also intervened. So, there is a delay of 2170 days in preferring the petition.



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5. That was resisted by the plaintiff by filing counter stating that on 28/03/2014, the respondents herein/defendants appeared through their Advocate and the case posted to various dates for filing written statement. Finally, it was posted to 05/12/2014 for filing the written statement. On that date, none appeared on behalf of the defendants. So, *ex-parte* order was passed followed by *ex-parte* decree. To execute the decree, the plaintiff filed execution petition before the trial court. It was posted for appearance of the defendants, on 26/09/2022 and then to 26/10/2022 for filing counter. In the meantime, the trial court allowed the petition on payment of costs.

6. Heard both sides.

7. The reason for non-filing of the written statement and delay, it has been stated by the respondents that threat was made by the petitioner herein not to contact their Advocate. Absolutely, it is a baseless allegation. If really, it is so, they ought to have given the complaint against the petitioner regarding the threat. That was not done. So, the reason assigned by the petitioner is completely out of place and unbelievable and also baseless one. So, this reason is not available to him.



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8.The next reason is that after the ex-parte decree, corona pandemic period intervened. But the pandemic situation stuck the Nation in 2019 and not in 2015.

9.Even though, this court is not in agreement with the exercise of jurisdiction by the trial court, the report is received from the trial court, which reads as under:-

"I further submit that, this court has passed an order in IA No.803 of 2022, dated 14/07/2023 that the petitioner will be allowed on payment of cost of Rs.3,000/- to the respondent/plaintiff by the petitioner/defendant on or before 21/06/2023 and in default, the petition would automatically be dismissed, that the petition has been posted for next hearing on 22.08.2023.

In this regard, a Memo has been filed by the petitioner/defendant in IA No.803 of 2022, dated 22.08.2023 stated that the cost of Rs.3,000/- has been paid to the respondent/plaintiff and an endorsement has also been made in the Memo by the respondent/plaintiff. A photocopy of the Memo is enclosed herewith for kind perusal.



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I further submit that, in view of the Memo, the Interlocutory Application in IA No.803/2022 was allowed on 22.08.2023. I further submit that, a subsequent Interlocutory Application filed in IA No.831/2023 in O.S.No. 38/2014 under Order 9 Rule 13 of CPC was allowed on 16.10.2023 as counter not filed and I.A No.803/2022 was already allowed on 22.08.2023.

I further submit that, as per Order in I.A No.831, the Ex-parte Decree passed in O.S No.38/2014 was set aside on 16.10.2023. Issues have been framed in the suit and posted for trial."

10.It is also seen that the execution petition was also filed. In that, the petitioner appeared in-spite of the delay occurred. The party must come to the court with clean hands. Making baseless averments and allegations are per se illegal and cannot be taken into account at all. But it appears that the trial court has accepted the reasons stated by the respondents herein and imposed costs to set aside the ex-parte decree by granting liberty and chance to them to contest the matter. The petitioner has also received the cost of Rs.3,000/-, but with an endorsement that the cost is received without



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prejudice to the plaintiff. The petitioner cannot take the double stand. Either, he ought to have received the cost or would have refused to receive the costs. Without doing that, he preferred this revision. Having accepted the cost, it may not be proper on the part of the petitioner, now making objection that the order of the trial court is not legal. On the sole ground, the civil revision petition is dismissed, without going into the other aspects.

11.In the result, this civil revision petition is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

19/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The IV Additional District Judge,
Madurai.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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