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CRP.No.2285 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2285 of 2020

1.C.Chinnamadhu
2.C.Chennaiyan
3.M.Krishnammal
4.M.Chennammal

.. Petitioners

Versus

1.S.Padmavathi
2.C.Chennakrishnan

.. Respondents

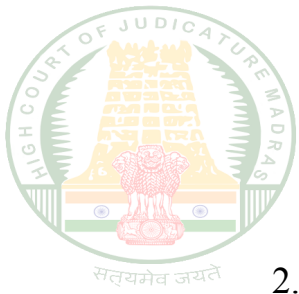
Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 04.02.2020 made in I.A.No.212 of 2018 in O.S.No.201 of 2013 on the file of Subordinate Judge, Uthangarai.

For Petitioners : Mr.K.Myilsamy

For Respondents : Mr.K.Thiruvengadam for R1
R2-Court notice returned (No such person)

ORDER

Challenge has been made to the order dismissing the application in I.A.No.212 of 2018 dated 04.02.2020 filed seeking condone the delay of 1455 days to set aside the exparte decree made in O.S.No.201 of 2013 dated 18.12.2013.



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2. The respondent has filed a suit in O.S.No.201 of 2013 on the file of the learned Sub Judge, Uthangarai as against the petitioners for the relief of specific performance. The suit was decreed exparte on 18.12.2013. Against which, the petitioner filed an application in I.A.No.212 of 2018 to condone the delay of 1455 days in filing the petition to set aside the exparte decree and the said application was dismissed vide order dated 19.09.2019. The reasons assigned by the petitioners to condone the delay is that they never received any demand notice, court summons and they are living in different places and first defendant was suffering from jaundice and confined to country treatment, therefore, the delay. The Trial Court dismissed the application vide order dated 04.02.2020 on the ground that the court summon was returned with an endorsement “as refused”, hence, it cannot be said that court summons were not served on them, that apart, there was no sufficient reasons assigned by the petitioners. Challenging the same, the present revision.

3. The learned Counsel for the petitioner would mainly contend that the Trial Court ought not to have dismissed the application to condone the delay in filing petition to set aside the exparte order in O.S.No.201 of 2013, since in the suit, the notice has not been served to the petitioner as per



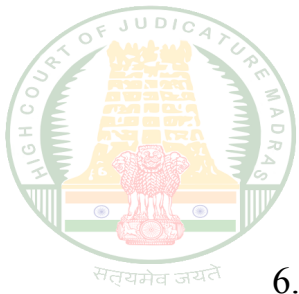
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Order V Rules 17, 18 and 19 of CPC. Therefore, when the mandatory procedures have not been followed, the Trial Court holding that there was a proper service on the judgment debtors cannot be sustained in the eye of law. It is his further contention that the decree and judgment passed by the Trial Court does not satisfy the requirements to be complied under Order XX Rules 4 and 5 of CPC. Therefore, it is the contention that as long as the service has not been effected in the manner known to law on the judgments debtors, such passing of ex parte order cannot be sustained in the eye of law. Hence, seeks for allowing this revision.

4. The learned counsel for the respondent/plaintiff submitted that the petitioners were aware of the proceedings, in this regard, the process server has obtained endorsement in the court summons as refused. Therefore, the conduct of the petitioner remains significant and that cannot be brushed aside altogether. The order of the Trial Court dismissing the application does not suffer from any infirmity and therefore, seeks for dismissal of this revision.

5. Heard both sides and perused the materials placed on record.



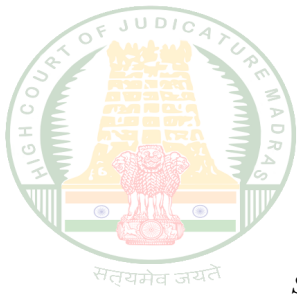
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6. Admittedly, the facts as narrated above is not in dispute. It is the specific case of the revision petitioner that he has not been served with the summons or notice in the execution proceedings. The learned Trial Court simply relied upon the endorsement of the amin and held that service is sufficient and the petitioner has dragged the proceedings and refused to condone the delay in filing the petition to set aside the exparte order.

7. It is useful to extract the provisions of Order V Rules 17, 18 & 19 of CPC, which reads as follows:

" 17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Endorsement of time and manner of service.—The



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serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit."

8. The above provisions make it clear that when a summons is returned under Rule 17, the serving officer ought to have filed an affidavit substantiating the refusal by the parties. This Court also verified the records and no such affidavit has been filed by the amin. If such affidavit has not been filed by amin, the Court shall examine the serving officer on oath, touching his proceedings, and make such further enquiry in the matter as it thinks fit; and should either declare that the summons has been duly served or order such service as it thinks fit. Further, it would also make clear that before declaring that summons has been duly served to pass ex parte order, particularly when the endorsement is made by the Amin to the effect that parties refused to receive the summons, the serving officer ought to have



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been examined as per Order V Rule 19 of CPC.

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9. Therefore, the above provisions make it clear that before declaring that there is a proper service, in the event of refusal by the parties, the Executing Court ought to have satisfied itself upon the affidavit filed by Amin or upon examination of Amin. Whereas, in this case, neither the affidavit has been filed by the Amin nor has the Amin been examined by the Trial Court to declare that there is a proper service effected on the parties. Therefore, when the mandatory procedures have not been followed, it cannot be held that there is a proper service. Without examining the Amin or the affidavit filed in this regard by the Amin, the Trial Court ought not to have held that the notice has been served and that was refused by the parties. Therefore, on this ground alone, this Court is of the view that the order of the Trial Court has to be set aside.

10. Whereas, in this case, before passing the ex parte order, mandatory procedures of service of notice has not been served. The amin has not filed any affidavit nor was examined by the Court to declare that there is a proper service as mandated under Order V Rules 17, 18 and 19 of CPC



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read with Order XXI Rules 24 and 25 of CPC. Therefore, when the Court has not followed the mandatory procedure prescribed under CPC, the order passed by the Trial Court has to be set aside.

11. Though, the conduct of the party in the present case is not appealing to the satisfaction of this Court, the same cannot be a ground to take away the substantive right. It is relevant to note that the Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359 held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits. Therefore, this Court is inclined to grant one more opportunity to contest the suit on merits by the parties.

12. Accordingly, the impugned order stands quashed. The Trial Court is directed to decide the petition under Order IX Rule 13 of CPC. In the event, the Order IX Rule 13 petition is allowed, the Trial Court shall decide the suit on merits and dispose of the same within a period of four months thereafter.



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13. In view of the above, this Revision Petition stands allowed. No costs.

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

The Sub Judge
Subordinate Court, Uthangarai

N.SATHISH KUMAR, J.,

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