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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP No.520 of 2025

and

CMP No.2985 of 2025

Mohan Selvakumar

Petitioner

Vs

Subbaraya Gounder (Died)

1. Rathinasamy,
2. Periyasamy,
3. Nageswari,
4. Minor Sandeep
5. Karthikeyan

Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908, to set aside the fair and final order dated 05.11.2024 in I.A.No.956 of 2012 in O.S.No.702 of 2009 on the file of the Sub Court, Palladam, and allow the Civil Revision Petition.



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For Petitioner(s): Mr. S. Mukunth, Senior Advocate.

For Mr. S. Kaithamalai Kumaran

For Respondent(s): No Appearance, (for R1 to R3 & R4)

Mr. V. Anandhamurthy for R5

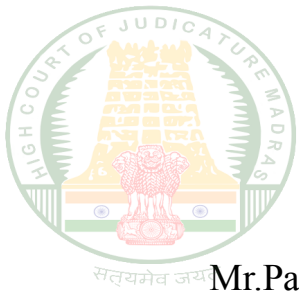
ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and final decree dated 05.11.2024 passed in I.A.No.956 of 2012 in O.S.No.702 of 2009 on the file of the Sub-Court, Palladam.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the fifth respondent.

3. The brief facts of the case are as follows :

(i) The petitioner is the second defendant in the said suit. Originally, the suit was filed by one Mr.Subbaraya Gounder against one Mr.Palanisamy, who is the father of the petitioner, one Mrs. Palanathan, W/o.

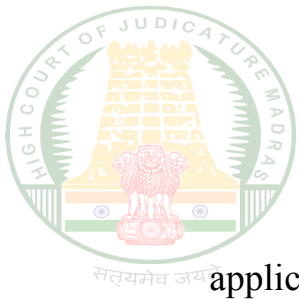


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Mr.Palanisamy, who is the mother of the petitioner and the petitioner herein.

The suit was filed seeking specific performance of the sale deed dated 20.10.2004, executed in favour of the plaintiff in respect of the suit property or in the alternative, to direct the defendants to repay a sum of Rs.4,50,000/- with future interest at the rate of 24% per annum till the date of payment and create a charge over the property till the due payment of the decree amount.

(ii) Since the defendants did not appear before the Trial Court, they were called absent and set exparte and an exparte decree came to be passed on 17.12.2009. Thereafter, the plaintiff preferred an execution petition in E.P.No.10 of 2011 before the Subordinate Court, Tiruppur and during the pendency of the said execution petition, the plaintiff died and his legal heirs were brought on record. After service of notices in the said execution petition, the petitioner herein, who is the second defendant in the suit, filed an application in I.A.No.956 of 2012 in O.S.No.702 of 2009, before the Sub-Court, Palladam, seeking to condone the delay of 948 days in filing the

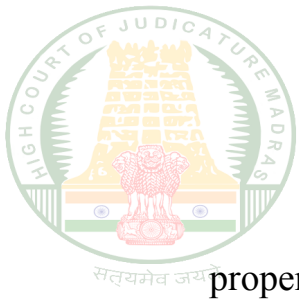


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application under Order IX Rule 13 of the Civil Procedure Code. The learned Trial Court, not being satisfied with the reasons adduced by the petitioner in the said application, had dismissed the same, as against which, the present Civil Revision Petition has been filed.

4. Learned Senior Counsel appearing on behalf of the petitioner made the following submissions :

(a) Though the delay is enormous, the fact remains that the judgement does not satisfy the requirements of Order XX Rules 4 and 5 of the CPC. Further, the petitioner's father, who was the first defendant, was missing and the petitioner raised a suspicion that the plaintiff was responsible for the disappearance of his father. Thereafter, a habeas corpus petition in HCP.No.111 of 2010 came to be filed by the petitioner before this Court and till date, the whereabouts of the petitioner's father are not known. Since the petitioner was taking steps to find his missing father, he was unable to



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properly follow the case and hence, there had been a delay of 948 days in filing the petition to set aside the exparte judgement and decree dated 17.12.2009.

(b) Further, the suit is for specific performance and the prayer of the plaintiff was also for an alternative relief for the refund of the said sum of Rs.4,50,000/- together with future interest at 24% per annum. The petitioner has a good case on merits since the date of the alleged sale agreement itself is disputed and further, the suit is filed beyond the period of limitation. The petitioner, in order to show his bona fides, is prepared to deposit a sum of Rs.20 Lakhs to the credit of the Trial Court.

(c) In support of his contentions, the learned Senior Counsel relied on the judgement of the Division Bench of this Court in the case of ***Meenakshisundaram Textiles v. Valliammal Textiles Ltd.*** [reported in 2011 (3) CTC 168] wherein, this Court held as follows:-

"16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a



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judgment and a decree. In the event a judgment is rendered when the Defendant fails to defend the Suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above."

5. Per contra, the learned counsel appearing for the fifth respondent vehemently opposes and has contended that the delay of 948 days is enormous and that the Trial Court, rightly finding that the petitioner had not shown sufficient cause for the delay, had dismissed the present application. He further submits that despite the service of notice in the execution petition, which was filed in the year 2011, the present application has been filed much belatedly.



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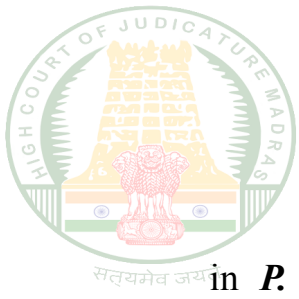
6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record, including the judgement and decree and the relevant portion of the judgement has been extracted hereunder for ready reference:-

Judgment

Suit for specific performance directing the defendants 1 to 3 to execute the sale deed in respect of the suit properties in favour of the plaintiff as performance the sale agreement dated 20.10.2004 within time frame fixed by this Hon'ble Court in default the sale deed through an officer and confirm the plaintiffs possession of the suit property (OR) in the alternative directing the defendants to repay a sum of Rs.4,50,000/- with future interest at 24% per annum from date of suit till repayment and create charge over the suit property for the due payment of the decree amount and for cost of the suit,

Plaintiff present examined as PW-1 Exhibits A1 to A8 marked perused the evidence and documents. Claim proved. Suit decreed for Specific Performance as prayed for with cost. Time for depositing balance consideration in one month from this day."

7. At this juncture, it is useful to refer to the Judgement of this Court



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in ***P. Sakthivel v. Govindappa Gounder @ Govindasamy Gounder @***

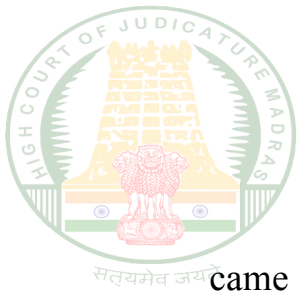
Govinda Gounder and another [CRP.No.1560 of 2024 dated 02.09.2024],

more particularly the discussion in paragraph Nos.12 which is extracted

hereunder:-

"12. The Order XX Rule 4 CPC would clearly state that the judgement of the Court shall contain a concise statement of the case, the points for determination, the decision there on and the reasons for such decision. Therefore, the judgment passed by the Court below does not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. The judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9) of CPC."

8. The facts of the case in the judgement extracted *supra* pertain to a suit seeking for damages whereas the present suit in O.S.No.702 of 2009 has been filed for the relief of specific performance. Though the present suit



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came to be decreed as prayed for on 17.12.2009, it is an ex parte judgement without any reasoning and the petitioner suffered a decree without having contested the suit on merits. That apart, a bare reading of the ex parte judgement dated 17.12.2009 shows that the Learned Judge has hastily passed an order, without conforming to the requirements prescribed under Order XX Rule 4 of C.P.C.

9. In ***Meenakshisundaram Textiles v. Valliammal Textiles Ltd.***

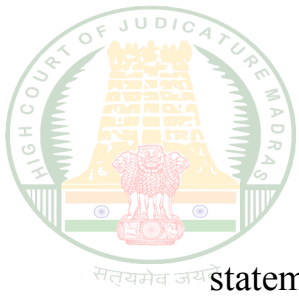
referred *supra*, the Division Bench of this Court has held that when a party is set ex parte, the court shall consider the pleadings and evidence to arrive at a finding as to whether the Plaintiff is entitled to a decree and an ex parte decree should show application of minimum requirement of consideration of pleadings and evidence. However, the judgement passed by the Trial Court is without considering the pleadings and evidence and further, does not conform with the provisions under Order XX Rule 4 of C.P.C and as such, liable to be set aside.



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10. Further, taking into consideration that the prayer in the suit is for specific performance and the fact that the plaintiff himself has asked for an alternative relief to direct the defendants to repay the sum of Rs.4,50,000/- together with interest, this Court is of the opinion that the interests of both parties can be protected by directing the petitioner to deposit a sum of Rs.20 Lakhs to the credit of O.S.No.702 of 2009 on the file of the I-Additional District Court, Coimbatore, for compensating the inconvenience caused to the respondents by the delay on the part of the petitioner and with a direction to complete the suit on merits within a specified time frame.

11. In view of the above, the revision petition stands disposed of with a direction to the petitioner to deposit a sum of Rs.20,00,000/- to the credit of the suit in O.S.No. 702 of 2009 on or before 06.06.2025 and on such deposit, the exparte judgement and decree dated 17.12.2009 shall stand set aside. The petitioner, on the same date i.e., 06.06.2025, shall file his written



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statement and thereafter, the Trial court shall frame issues and proceed with the trial and dispose of the suit as expeditiously as possible, preferably within a period of 6 months. Further, it is made clear that no extension of time shall be granted for depositing the aforesaid sum of Rs.20,00,000/-.

12. With the above observations and directions, this Civil Revision Petition is allowed. No costs.

08/04/25

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The First Additional District Court, Coimbatore.
2. The Sub-Court, Palladam.
3. The Subordinate Court, Tiruppur.

Note: Issue order copy on 06.05.2025



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A.D.JAGADISH CHANDIRA J.

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