

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).20119/2007

(From the judgement and order dated 27/06/2007 in CRP No. 651/2007 of the HIGH COURT OF MADRAS)

SIVAKUMAR & ANR. Petitioner(s)

VERSUS

R. SENGODAN Respondent(s)

(With appln(s) for exemption from filing O.T. and with prayer for interim relief and office report)

Date: 13/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s) Mr. Jayanth Muth Raj,Adv.
Ms. Malavika G.,Adv.
Mr. C.K. Sasi,Adv.

For Respondent(s) Mr. E.R. Kumar,Adv.
for Parekh & Co.,Advs.

UPON hearing counsel the Court made the following
ORDER

Leave granted.
The appeal is dismissed in terms of the signed order.
The respondent shall be at liberty to withdraw the sum of Rs. 50,000/-
deposited by the appellants in this Court.

(A.S. BISHT)
MASTER

COURT MASTER

(PUSHAP LATA BHARDWAJ) COURT

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4302 OF 2009
[Arising out of SLP(C) No. 20119/2007]

SIVAKUMAR AND ANR. ... APPELLANT(S)

:VERSUS:

R. SENGODAN ... RESPONDENT(S)

ORDER

Leave granted.

The parties hereto entered into an agreement for sale. The respondent advanced a sum of Rs. 1 lakh to the appellants. As the appellants allegedly were not in a position to perform their part of the contract, the respondent rescinded the said agreement for sale and demanded refund of the said amount of Rs. 1 lakh.

On failure on the part of the appellants to comply with the said demand, the respondent filed a suit for decree for payment of the said amount with interest in the Court of Subordinate Judge at Erode which was marked as O.S. No. 157/2002. Indisputably, despite service of notice, the appellants neither appeared before the Court of Subordinate Judge nor filed any written statement within a period of 90 days, as is required under Order VIII Rule 1 of the Code of Civil Procedure. The suit, in the aforementioned premise, was set ex-parte by an order dated 22.11.2002 and an ex-parte decree was passed on 29.11.2002.

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The appellants contend that they had filed an application for setting aside the said ex-parte decree on 5.12.2002 which fact stands accepted. The said application was, however, returned to the counsel for the appellants on 9.1.2003. It is furthermore not in dispute that the respondent initiated proceedings for execution of the said decree. Notice in the said execution proceedings was served upon the appellants on 13.10.2003.

The appellants further contend that they were not aware as to whether their application for setting aside the ex-parte decree filed on 5.12.2002, was returned to their counsel. As they had lost faith in their counsel, they took back the brief from him on or after 22.1.2004 and thereafter, again filed an application for setting aside the ex-parte decree passed on 29.11.2002. However, the said application has been found to be barred by 656 days. The learned Trial Court refused to condone the delay and dismissed the application by its order dated 5.12.2006, which has been upheld by the High Court by the impugned order.

Mr. Jayanth Muth Raj, learned counsel appearing on behalf of the appellants would contend that having regard to the fact the appellants had already deposited a sum of Rs. 50,000/- in partial discharge of the decretal

amount, this Court could give an opportunity to his clients to defend the suit. It has rightly been pointed out before us by Mr. E.R. Kumar, learned counsel for the respondent that even assuming that the appellants were not aware of the fact that the application for setting aside the ex-parte decree had been returned to their lawyer on 9.1.2003, keeping in view the fact that they admittedly received notice in the execution proceedings on 13.10.2003, we fail to understand as to why they did not file another application for setting aside the ex-parte decree immediately thereafter till 13.10.2004.

In view of the aforementioned fact, we are of the opinion that no case has been made out for our interference with the impugned judgment. The appeal is dismissed accordingly.

The respondent shall be at liberty to withdraw the sum of Rs. 50,000/- deposited by the appellants in this Court.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
JULY 13, 2009.