2021 SCeJ 913 (Mad.)

MADRAS HIGH COURT

Before : R. Subramanian, J.

SHANTHIMALAI TRUST — Appellant,

versus

ARUNACHALA EDUCATION AND ENVIRONMENT DEVELOPMENT TRUST (AEED TRUST) — Respondent.

Civil Revision Petition(Npd) No. 4324 of 2018

28.10.2020

(i) Civil Procedure Code, 1908 (V of 1908), Order 5 Rule 1, Order 9 Rule 1 , Order 9 Rule 6 - After the amendment in Order 5 Rule 1, the Court can issue summons to the defendants to appearand answer the claim within 30 days from the date of service of summons on that defendants - Proviso to the said Rule enables the Court to extend the time by 90 days for reasons to be recorded - Amended Rule 1 of Order 5 of the Code of Civil Procedure, makes it clear that the defendant would have a minimum of 30 days for filing a written statement of his defence in a suit - Therefore, it follows that the Court cannot proceed exparte within 30 days from the date of service of summons and pass an exparte decree - Any such exparte decree would be in breach of the mandatory requirements of Order 5 Rule 1 of the Code of Civil Procedure - No doubt Order 9 Rule 1 of the Code, requires the parties to appear before the Court on the day fixed in the summons, but it does not authorise the Court to proceed exparte within the time allowed under Order 5 Rule 1 of the Code of Civil Procedure – Under Clause (c) of Sub Rule (1) of Rule 6, the Court is required to postpone the hearing of the suit to a future date, if it is proved that the summons were served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons - Therefore, when the Court finds that some more time was left for the defendant to appear and answer the summons, as per Rule 1 of Order 5, the Court has to necessarily await or direct issuance fresh summons under Clause (c) of Sub Rule (1) of Rule 6 of Order 9 of the Code of Civil Procedure - Any contrary interpretation would lead to rendering the provisions of Rule 1 of Order 5 otiose - Civil Court shall not proceed to pass ex parte Judgment within 30 days from the date of service of Summons in Suit - Amended Rule 1of Order 5 makes it clear that, defendant would have a minimum 30 days to file Written Statement. Proviso enables Court to extend time till 90 days - Ex parte decree passed within 30 days of summons would be in breach of mandatory requirement of Order 5, Rule 1, C.P.C. - Ex parte Decree, set aside - Once the Code mandates that the defendant shall have a minimum of 30 days for filing his statement of defence, it automatically implies that an exparte decree shall not be passed within those 30 days. #2021 SCeJ 913 (Mad.) [Para 20, 22, 23]

(ii) Constitution of India, Article 227 - The observations of the Hon'ble Supreme Court in *Virudhunagar Hindu* Nadargal

Dharma Paribalana Sabai v. Tuticorin Educational Society, 2019 SCeJ 1070, **would not be taken to mean that there is a total bar on the exercise of jurisdiction under Article 227 by the High Courts in cases where a remedy is available under the Code of Civil Procedure - Even the Hon'ble Supreme Court has only said that the availability of a remedy under the provisions of the Code of Civil Procedure may have to be construed as a near total bar - The Hon'ble Supreme Court has not totally debarred the High Courts from exercising their power under Article 227 in appropriate cases, if the High Court feels that the Trial Court has failed in its duty - Fnd that the Trial Court has not only passed a wholly illegal exparte decree, but it has shirked its responsibility in disposing of the applications for condonation of delay in seeking to set aside the exparte decree within a reasonable time by merely adjourning the proceedings without showing any sense of responsibility. #2021 SCeJ 913 (Mad.) [Para 33]**

Cases Referred

1. *Venkatasubbiah Naidu v. S. Chellappan and Ors., (2000) 7 SCC 695*
2. *M/s.Meenakshisundaram Textiles v. Valliammal Textiles Ltd., (2011) 3 CTC 168*
3. *Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423*
4. *Ramachandran & Others v. Balakrishnan, (2020) 4 LW 603*
5. *Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675*
6. ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society., 2019 SCeJ 1070***

Selvaraj, Advocate, M/S D Jayasingh, Advocate, S. Radha Gopalan, Advocate, Y.T. Aravind Gosh, Advocate

JUDGMENT/ORDER

R Subramanian, J. - This matter is taken up for hearing through Video- Conferencing. This Revision is by the first defendant in OS No.47 of 2009 seeking an extraordinary prayer to set aside the judgment and decree passed by the learned Principal Subordinate Judge, Thiruvannamalai, in the said suit on 28.04.2009.

2. This litigation presents a grim picture of the on goings in the District Judiciary.

3. The suit in OS No.47 of 2009 was filed by the first respondent herein seeking a declaration of its title over the suit properties, to restrain the petitioner/first defendant Trust, its men, agents, and others by means of permanent injunction from ever interfering with the peaceful possession and enjoyment of the plaintiff Trust over the suit properties, to restrain the respondents 2to 5/defendants 2 to 5 and their subordinates by means of permanent injunction from ever cancelling the patta granted in favour of the plaintiff Trust as per the terms of the settlement deed executed by the 1st defendant Trust in favour of the plaintiff Trust and for costs.

4. The suit was filed on 30.03.2009 along with two Interlocutory Applications for interim injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure which came to be numbered as IA Nos.56 and 57 of 2009. The Trial Court

ordered notice in the said Applications returnable by 27.04.2009. Simultaneously summons for the first hearing in the suit was also issued returnable by 27.04.2009. The notice was despatched on 31.03.2009. It is seen from the records that an application to dispense with the notice under Section 80 of the Code of Civil Procedure was filed in IA No.55 of 2009 and the same came to be allowed on 30.03.2009. The suit summons were served on the defendants 1 to 5 on 06.04.2009. The notices in the applications viz. IA Nos.56 and 57 were also served on the same day on all the defendants/respondents. When the suit was called on for hearing on 27.04.2009, the following order was passed, in the suit, by the learned Subordinate Judge, Thiruvannamalai.

"D1 to D5 summons served. D1 to D5 are called absent and set exparte. For exparte evidence, call on 28.04.2009."

On 28.04.2009, the following order came to be passed:

"Proof affidavit of P.W.1 filed and recorded and Exhibits A1 to A15 are marked. Suit is decreed as prayed for with cost."

The records also reveal that on 27.04.2009, the learned Principal Subordinate Judge, Thiruvannamalai passed the following orders in IA No.56 of 2009.

"Respondents notice served. R2 to R5 are called absent set exparte. Interim injunction granted and is made absolute till the disposal of the suit. This petition is allowed as prayed for accordingly with cost." Similar orders were passed in IA No.57 of 2009 also.

5. While things stood thus, the first defendant filed two applications on 04.12.2009, one seeking to condone the delay of 190 days in filing an application under Order 9 Rule 13 of the Code of Civil Procedure to set aside the exparte decree and the other under Order 9 Rule 13 of the of the Code of Civil Procedure to set aside the exparte decree. The application for condonation of delay was numbered as IA No.337 of 2009. The official respondents viz., the defendants 2 to 5 filed an application in IA No.75 of 2010 seeking condonation of delay of 274 days in filing a petition to set aside the exparte decree along with an application to set aside the exparte decree on 09.03.2010.

6. In the meantime, it appears that there was a change in the administration of the plaintiff Trust. Therefore, the plaintiff Trust filed an application in IA No.118 of 2010 seeking to delete the name of N.Kumaran s/o.Neelakandan, as the Managing Trustee of the plaintiff Trust and to substitute the name of Fr.Pancras, as the Managing Trustee of the plaintiff Trust. This application was also kept pending for various reasons which I shall deal with a little later.

7. The application filed by the fifth defendant viz., the Tahsildar Thiruvannamalai, to set aside the exparte decree was numbered as IA No.119 of 2010. But the Court, however, realised that the Section 5 Application filed by the same petitioner was pending as IA No.75 of 2010 and therefore, this application was also adjourned from time to time on the ground that IA No.75 of 2010 is pending.

8. The present Revision was filed mainly complaining that all these interlocutory applications are being adjourned from time to time and the exparte decree passed in the suit itself is against law and in violation of the mandatory requirements of the Code of Civil Procedure. Surprised by the fact that the interlocutory applications viz., applications to condone the delay in filing a petition to set aside the exparte decree, application to amend the cause title by

substituting the Managing Trustee of the plaintiff Trust are pending for over a period of 10 years, I had call for the records in the suit as well as the interlocutory applications. I had also call for a report from the Additional Subordinate Judge, before whom these proceedings are pending. The report sent by the learned Subordinate Judge reveals that the applications are being adjourned from time to time at the request of both sides, because of the pendency of a Writ Petition in WP No.2961 of 2010 in this Court. The said Writ Petition was stated to have been filed by the plaintiff in thesuit.

9. The learned counsel for the plaintiff in the suit/ first respondent herein, had produced the papers in the said Writ Petition. To my surprise, I find that the Writ Petition is challenging an order passed by the Tahsildar, Thiruvannamalai, dated 25.01.2010, cancelling the patta issued in favour of the petitioner/first respondent Trust, along with an interlocutory application for stay of all further proceedings pursuant to the order impugned in the Writ Petition. Though originally stay was granted for a limited period and was extended by two weeks on 22.03.2010,I am informed, that there are no orders of stay as on today, though the Writ Petition is stated to be pending.

10. I have heard Mr.V.Selvaraj, learned counsel appearing for M/s.D.Jayasingh for the petitioner, Mrs.S.Radha Gopalan, learned counsel appearing for the first respondent and Mr.Y.T.Arvind Gosh, learned Additional Government Pleader (CS), appearing for the respondents 2 to 5.

11. Mr.V.Selvaraj, learned counsel appearing for the petitioner would vehemently contend that the exparte judgment and decree passed on 28.04.2009 is on the face of it illegal and liable to be set aside by this Court exercising its extraordinary supervisory jurisdiction under Article 227 of the Constitution of India. Mr.V.Selvaraj would point out that a suit that was instituted on 30.03.2009 came to be decreed exparte on 28.04.2009, even before the 30 days period available to the defendants to submit their defence, to contend that the exparte decree is on the face of it illegal. Drawing my attention to the contents of the exparte judgment, Mr.Selvaraj, would submit that the said exparte judgment does not satisfy the requirements of Order 41 Rule 31 of the Code of Civil Procedure.

12. In support of his submission that the judgment dated 28.04.2009 is on the face of it illegal Mr.V.Selvaraj, would rely upon the Division Bench judgment of this Court in **M/s.Meenakshisundaram Textiles v. Valliammal Textiles Ltd., (2011) 3 CTC 168**. He would also draw my attention to a judgment of mine in **Ramachandran & Others v. Balakrishnan & Others, (2020) 4 LW603**.

13. Contending contra Mrs.S.Radha Gopalan, learned counsel appearing for the first respondent would submit that this Revision having been filed only in 2018 nearly 8 years after the filing of applications seeking condonation of delay in setting aside the exparte decree before the Trial Court, is hit by latches. The learned counsel would also point out that interference under Article 227 of the Constitution of India, can only be in exceptional cases and it cannot be a routine exercise of power for curing all irregularities, more so, when a remedy is available under the Code of Civil Procedure. Pointing out to the pendency of the applications before the Trial Court, Mrs.S.Radha Gopalan, would submit that the petitioner should await the result of the applications that are pending before the Trial Court. She would also rely upon the judgment of the Hon'ble Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and**

Ors. Vs. Tuticorin Educational Society and Ors., *2019 SCeJ 1070*, (2019) 9 SCC 538.

14. I have considered the rival submissions.

15. I shall first advert to the contention of Mr.V.Selvaraj, that the exparte judgment and decree dated 28.04.2009 is on the face of it illegal, because it came to be passed within a period of 30 days from the date of institution of the suit, thereby denying a chance to the defendants to defend the suit. Drawing my attention to the provisions of Order 5 Rule 1 of the Code of Civil Procedure, Mr.V.Selvaraj would contend that the defendants are given 30 days time to file their written statement of defence, from the date of service of summons on them. In the case on hand, the suit summons were served on 06.04.2009. Therefore, the defendants in the suit had 30 days time, from 06.04.2009 to file their written statement. The Court ought not to have proceeded exparte even before the expiry of the said 30 days.

16. In reply to the said submission, Ms.S.Radha Gopalan, learned counsel would contend that if the defendants do not appear on the day fixed in the summons, the Court was at liberty to proceed in the absence of the party. She would also rely upon Order 9 Rule 1 of the Code of Civil Procedure, which requires the parties to appear on the day fixed in the summons. She would also point out that where the defendants are absent on the day fixed in the summons, despite service of summons, the Court may make an order that the suit be heard exparte. She would also rely upon the provisions of Rule 6 of Order 9 of the Code of Civil Procedure, in support of her contention.

17. Order 5 Rule 1 of the Code of Civil Procedure, before its Amendment by Act 22 of 2002, reads as follows:

Summons.-1 (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff claim:

Provided further that where a summons has been issued, the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court."

18. The Rule as it stands today, after the amendment by Act 22 of 2002, reads as follows:

"Order V Rule 1 Summons.-1.

(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of sum-

mons on that defendant. (Emphasis supplied)

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court."

19. There is a marked difference in Rule 1 of Order 5, before and after the amendment. As could be seen from the language, before the amendment of Order 5 Rule 1, it was open to the Court to issue summons to the defendants calling upon him to answer the claim on a day to be therein specified. But after the amendment, the Court can issue summons to the defendants to appear and answer the claim within 30 days from the date of service of summons on that defendants. Proviso to the said Rule enables the Court to extend the time by 90 days for reasons to be recorded.

20. The amended Rule 1 of Order 5 of the Code of Civil Procedure, makes it clear that the defendant would have a minimum of 30 days for filing a written statement of his defence in a suit. Therefore, it follows that the Court cannot proceed exparte within 30 days from the date of service of summons and pass an exparte decree. Any such exparte decree would be undoubtedly in breach of the mandatory requirements of Order 5 Rule 1 of the Code of Civil Procedure. No doubt Order 9 Rule 1 of the Code, requires the parties to appear before the Court on the day fixed in the summons, but it does not authorise the Court to proceed exparte within the time allowed under Order 5 Rule 1 of the Code of Civil Procedure.

21. Order 9 Rule 6 of the Code of Civil Procedure, which provides for procedure to be adopted by the Court when the parties are absent, reads as follows:

"6. Procedure when only plaintiff appears.-

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

(a) When summons duly served.-if it is proved that the summons was duly served, the Court may make an order that the suit be heard ex parte;

(b) When summons not duly served.-if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.- If it is proved that the summons was served on

the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement."

22. Clause (c) of Sub Rule (1) of Rule 6 assumes significance in this regard. The Court is required to postpone the hearing of the suit to a future date, if it is proved that the summons were served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons. Therefore, when the Court finds that some more time was left for the defendant to appear and answer the summons, as per Rule 1 of Order 5, the Court has to necessarily await or direct issuance fresh summons under Clause (c) of Sub Rule (1) of Rule 6 of Order 9 of the Code of Civil Procedure.

23. Any contrary interpretation would lead to rendering the provisions of Rule 1 of Order 5 otiose. Once the Code mandates that the defendant shall have a minimum of 30 days for filing his statement of defence, it automatically implies that an exparte decree shall not be passed within those 30 days. Even in Service Law, if a notice is issued to a delinquent calling upon him to furnish his explanation within a specific period and an order is passed before the expiry of the said period, the order is unsustainable. The said principle of law would also apply to a Civil Court, after the 2002 Amendment of the Code of Civil Procedure and a Civil Court cannot and should not proceed to pass an exparte judgment or a decree within 30 days from the date of service of summons in the suit.

24. I have no doubt in my mind that the action of the Sub Court, Thiruvannamalai, in proceeding exparte within 30 days from the date of filing of the suit, leave alone from the date of service of summons and granting an exparte decree on the 28th day of filing of the Suit is clearly illegal and it does not require any further examination to be declared as such.

25. The next ground urged by MR.V.Selvaraj, is also quite relevant. The exparte judgment dated 28.04.2009 reads as follows:

In the Court of the Principal Subordinate Judge, Tiruvannamalai
Present: Thiru M.Sambasivam, B.Sc., B.L., Principal Subordinate Judge.
Tuesday, the 28th day of April, 2009.
Original suit No.47 of 2009
Arunachala Education and Environment Development Trust (AEED Trust)
Rep by its Managing Trustee Plaintiff
-vs-
Shanthimalai Trust,
Rep. By its Managing Trustee.

1. The State of Tamil Nadu Rep. By its District Collector.

2. The District Revenue Officer, Tiruvannamalai.

3. The Revenue Divisional officer, Tiruvannamalai.
4. The Tashildar Tiruvannamalai. Defendants

This original suit has been coming before me for hearing in the presence of Thiru K.Srinivasan, Advocate for the plaintiff, and the defendnats 1 to 5 were called absent, set exparte, as such this court made the following:-

JUDGMENT

Suit for declaring the title of the plaintiff trust over the suit properties and restrain the 1st defendant trust and its men by means of permanent injunction from ever interfering with the peaceful possession and enjoyment of the plaintiff trust over the suit properties and restrain the defendants 2 to 5 by means of permanent injunction from cancelling the patta granted in favour of
the plaintiff and for costs.

2. Proof Affidavit of P.W.1 filed and recorded and Ex.A1 to A15 are marked. Suit is decreed as prayed for with costs.

Pronounced by me in the open court, this the 28th day of April, 2009.

s/d
Principal Subordinate Judge,
Tiruvannamalai.

26. This definitely is not in compliance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure. This Court has repeatedly pointed out that even in cases where the defendants remain exparte, the Court is bound to apply its mind to the facts of the case and consider the evidence offered by the plaintiff at least on a prima facie basis, before coming to a conclusion. It could be seen that the judgment suffers total non-application of mind and not even one single requirement of law have been adhered to. The judgment extracts the prayer in the suit and states that proof affidavit of P.W.1 filed and recorded Exs.A1 to A15 marked, the suit is decreed as prayed for with cost. This is nothing but total dereliction of duty on the part of the learned Subordinate Judge.

27. A Division Bench of this Court had in **M/s.Meenakshisundaram Textiles v. Valliammal Textiles Ltd., (2011) 3 CTC 168** has, while dealing with the duty of the Court considering a case exparte, held as follows:

"10. Judgment not containing the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to call as "judgment".

11. When the defendant is set exparte, the burden is heavy on the Court, as it would not have the advantage of defence. Therefore, the Court should be extra careful in such cases and they should consider the pleadings and evidence and should arrive at a finding as to whether the plaintiff has made out a case for a decree.

12. The "judgment" should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. The practice of writing a judgment indicating that the defendant was exparte and as such the claim was proved and the suit was decreed, deserves to be Condemned." (Emphasis Supplied)

I had an occasion to consider a similar case in **Ramachandran & Others v. Balakrishnan & Others, (2020) 4 LW 603**, wherein after referring to the dictum of the Division Bench in **M/s.Meenakshisundaram Textiles v. Valliammal Textiles Ltd.,'s case** I had set aside the decree passed by the Trial Court for non application of mind on its part.

28. Unable to counter the legal deficiencies in the proceedings before the Trial Court Mrs.S.Radha Gopalan, learned counsel appearing for the first respondent would attempt to take shelter under the principle of latches and availability of alternative remedy. She would submit that since applications are pending before the Trial Court, this Court shall not interfere in exercise of the powers under Article 227 of the Constitution of India. In support of her submission, she would rely upon the judgment of the Hon'ble Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors., (2019) 9 SCC 538**. She would draw my attention to the following observations of the Hon'ble Supreme Court made therein:

> "10. Primarily the High Court, in our view, went wrong in overlooking the fact that there was already an appeal in C.M.A. No. 1 of 2018 filed before the Sub-Court at Tuticorin Under Order XLI, Rule 1(r) of the Code, at the instance of the fifth Defendant in the suit (third Respondent herein), as against the very same order of injunction and, therefore, there was no justification for invoking the supervisory jurisdiction Under Article 227.
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> **11.** Secondly, the High Court ought to have seen that when a remedy of appeal Under Section 104(1)(i) read with Order XLIII, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, the Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In **A. Venkatasubbiah Naidu v. S. Chellappan and Ors., (2000) 7 SCC 695**, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".
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> 12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory Rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of Code of Civil Procedure, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision Under Article 227, even a decree passed in a suit, on the same grounds on which the Respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this Court, while overruling the decision in **Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675**, pointed out in **Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423**, that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.
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> 13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a

> remedy under the Code of Civil Procedure, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision Under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

29. Relying heavily upon the above observations of the Hon'ble Supreme Court, Ms.S.Radha Gopalan, would contend that I shall not interfere under Article 227 of the Constitution of India, since the parties here to have already approached the Competent Civil Court, viz., The Sub Court, Thiruvannamali, by filing necessary applications. If it were in the normal circumstances, I would have had no hesitation in accepting the submissions of Mrs.S.Radha Gopalan based on the judgment of the Hon'ble Supreme Court. But the facts presented here go a long way to show that the Trial Court was and is guilty of dereliction of duty for nearly 10 years.

30. A perusal of the records forwarded by the Sub Court shows that all the applications have been adjourned, mechanically, without application of mind. The Application in IA No.337 of 2009 viz., the application seeking to condone the delay of 180 days in filing an application to set aside the exparte decree, which was filed on 04.12.2009 has been adjourned till 03.03.2020, i.e., prior to the lock down, on the ground that IA No.37 of 2010 is pending, No other endorsement is found in the docket orders to the said application. IA No.37 of 2010 which was filed on 28.01.2010 with the following prayer:

> "For the reasons more fully stated in the accompanying affidavit of the petitioner, it is prayed that this Hon'ble Court may be pleased to delete the name of Thiru.N.Kumaran, S/o. Neelakandan, having office at 157-A, Vettavalam Road, Thiruvannamalai from the cause title of the petitioner/plaintiff trust in the application filed by M.Manoharan in the name of the respondent herein and numbered as above and substitute the name of Fr.Pancras, son of Anthaiah having office at Ramana Maharishi Loyola Academy, Ayyampalayam, Tiruvannamalai 606 603 and direct the respondent herein to serve notice on me for enabling me to file the counter on behalf of AEED trust and pass such other further order or orders as this Hon'ble Court deems fit and proper under the circumstances of the case."
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> has been adjourned for 10 years on the ground that the Writ Petition is pending in this Court. I have already pointed out that the Writ Petition has nothing to do with the prayers that are sought for before the Civil Court. The Writ Petition is against an order cancelling the patta granted to the plaintiff in the suit. An application to substitute the Managing Trustee of a party to a Civil proceeding is being adjourned from time to time without application of mind on the ground a Writ Petition challenging an order cancelling the patta by a Revenue Authority is pending in the High Court. This in my view is nothing but total dereliction of duty not only on the part of the learned Subordinate Judge, but also on the part of the counsels appearing for the respective parties.

31. I have no hesitation to observe that all the counsels appearing in this particular case are guilty of dereliction of duty and negligence for having allowed the proceeding to be kept pending for

nearly 10 years. A very innocuous application for substitution of the Managing Trustee has been adjourned for 10 years now and I find certain endorsements which go to show that the learned Subordinate Judge has been totally misled and misdirected by the counsels for the parties. The pendency of the Writ Petition has nothing to do with the issue involved in the suit. The suit, as already pointed out, is one for declaration of title. Mutation of the Revenue Record pending suit or after the suit is not going to affect the decision of the Civil Court. Therefore, adjournment of the case on the ground that the Writ Petition is pending is nothing but a crime.

32. The learned Subordinate Judge in his report has stated that counsels for either side have been taking time on the ground that the Writ Petition is pending in this Court. I am therefore of the considered opinion that this is a fit case where the powers of this Court under Article 227 of the Constitution of India, will have to be exercised to put the suit back on track, so that the rights of the contesting parties are determined at the earliest. No doubt the Hon'ble Supreme Court has pointed out that there is an alternative remedy available in a Civil Court under the Code of the Civil Procedure, the High Court shall not ordinarily exercise its powers under Article 227 of the Constitution of India.

33. Ms.S.Radha Gopalan, would also contend that the petitioner herein is guilty of latches. May be the petitioner thought that it could make the learned Subordinate Judge see reason at least at some point of time and the petitioner chose to prosecute the proceedings before the Civil Court in all its earnestness. The failure on the part of the Civil Court to act within a reasonable time definitely would give a cause of action to the petitioner to approach this Court under Article 227 of the Constitution of India. It is not a case where a remedy available under the Code is bypassed. The petitioner has in fact approached the Civil Court seeking the remedy. It is only when the petitioner realised that the Civil Court is not acting on its application for a substantially long period, the petitioner has come to this Court seeking redressal invoking the extraordinary constitutional remedy.

34. I do not think the observations of the Hon'ble Supreme Court extracted above would be taken to mean that there is a total bar on the exercise of jurisdiction under Article 227 by the High Courts in cases where a remedy is available under the Code of Civil Procedure. Even the Hon'ble Supreme Court has only said that the availability of a remedy under the provisions of the Code of Civil Procedure may have to be construed as a near total bar. The Hon'ble Supreme Court has not totally debarred the High Courts from exercising their power under Article 227 in appropriate cases, if the High Court feels that the Trial Court has failed in its duty. I find that the Trial Court in the case on hand has not only passed a wholly illegal exparte decree, but it has shirked its responsibility in disposing of the applications for condonation of delay in seeking to set aside the exparte decree within a reasonable time by merely adjourning the proceedings without showing any sense of responsibility.

35. For all the foregoing reasons, I have no hesitation in setting aside the exparte decree dated 28.04.2009, in exercise of my power under Article 227 of the Constitution of India. The very fact that the exparte decree came to be passed within 30 days of the institution of the suit is by itself a reason to set aside the exparte decree.

36. The Civil Revision Petition is allowed the exparte decree dated 28.04.2009 is set aside, all the applica-

tions pending before the Trial Court, except the application in IA No. 37 of 2010 are closed as unnecessary. The application in IA No.37 of 2010 will be treated as an application for amendment of the cause title in the suit filed by the plaintiff and the same shall be disposed of within 30 days from the date of a receipt of the copy of the order and the Trial Court shall report such disposal to this Court.

37. The defendants in the suit will have 30 days time from today to file their written statements of defence. Once the written statements of defence are filed the Trial Court shall proceed with the suit in accordance with law and dispose of the same. Considering the fact that both the parties are Trusts and the fact that the Trial Court has also contributed to the situation that had arisen in this case, I refrain from imposing cost on any of the parties.