

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.2133 of 2018

K.M.Athaula

... Petitioner

Vs.

1.Y.Mohammed Yaseen

2.Sarath

3.N.S.M.Gowda

... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order and decretal order dated 25.06.2018 made in I.A.No.121 of 2018 in O.S.No.154 of 2017 on the file of the Court of the Subordinate Judge, Uthangarai.

For Petitioner : Mr.T.Dhanasekaran

For Respondents : Mr.M.Ashwin Kumar
for M/S.Sarvabhauman Associates, for R1

Mr.R.Bharath Kumar, for R2 & R3

* * * * *

ORDER

The above civil revision petition arises against the order passed by the learned Subordinate Judge, Uthangarai dismissing I.A.No.121 of 2018 filed for rejection of plaint in O.S.No.154 of 2017.

The suit is one for specific performance.

2. It is the contention of the revision petitioner that as per the agreement entered into between the parties, six months period was stipulated for performance. The agreement is dated 08.03.2012 and six months time expired on 08.09.2012. If the period of limitation is reckoned from 08.09.2012, then the suit should have been filed on 08.09.2015 whereas contending that payments were made subsequently on 15.12.2014 and 30.01.2015, the suit has been filed only in the year 2017. Hence, the application in I.A. No. 121 of 2018 was filed by the revision petitioner/1st defendant to reject the suit as barred by limitation. Such application was opposed by the 1st respondent herein/plaintiff contending that time is not the essence of contract and the time limit stipulated in the agreement was extended and substantial payments were made on 15.12.2014 and 30.01.2015. The trial Court rejected the case of the 1st defendant and dismissed the application, as against which the present revision petition has been filed.

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3. The learned Senior Counsel for the revision petitioner contended that when the time limit for performance of the agreement has been specifically fixed in the agreement, it only shows that time is the essence of contract. As six months time period has been stipulated in the agreement for performance, which expired on 08.09.2012, the suit should have been filed within three years from the said date, whereas, the suit has been filed only in the year 2017. Hence, the suit is certainly barred by limitation and the same is liable to be rejected.

4. The learned counsel for the 1st respondent would contend that though the time period of six months has been fixed in the agreement, the conduct of the parties would show that time is not the essence of contract as payments were made subsequently on 15.12.2014 and 30.01.2015. Further, according to the learned counsel, the payments made by the 1st respondent/plaintiff towards sale consideration have also been received by the 1st defendant/revision petitioner herein.

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5. Heard the learned counsel on either side.

N.SATHISH KUMAR,J.

AT

6. Though the time stipulated in the agreement makes time as essence of contract, the 1st respondent herein/plaintiff would contend that subsequent payments dehors the condition makes time as not the essence of contract. When there are contentious issues with regard to the limitation aspect, I am of the view that the same can be decided only at the time of trial and not at this stage. The suit cannot be rejected when there are contentious issues with regard to limitation.

7. Accordingly, the revision petition stands dismissed. The trial Court is directed to dispose of the impugned suit within a period of three months from the date of receipt of a copy of this order. The petitioner is at liberty to canvass the case before the trial Court including the issue of limitation.

सत्यमेव जयते

11.04.2019

Index: Yes/No

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Note: Issue order copy on 25.04.2019

To

The Subordinate Judge, Uthangarai.

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