

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.369 of 2014

N.M.Venkatesh ... Petitioner

Vs.

A.S.Bairappa ... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC, to call for the records relating to the order passed by the Hon'ble Subordinate Court, Hosur in I.A.No.249 of 2003 in O.S.No.127 of 2002 dated 21.02.2005 and setting aside the same.

For Petitioner : Mr.J.Delipen

For Respondent : No Appearance

ORDER

WEB COPY

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 21.02.2005 in I.A.No.249 of 2003 in O.S.No.127 of 2002 passed by the learned Subordinate Court, Hosur.

2.The respondent had filed above suit for specific performance in terms of an agreement dated 14.12.2001, to direct the petitioner to execute the sale deed after the receiving the balance consideration of Rs.25,000/-. The suit was filed on 02.04.2002.

3.Though, the suit summons was served on the petitioner on 12.07.2002, the petitioner did not appear before the Court. It is case of the petitioner that he does not know to read and write in tamil and therefore he did not understand the content of the suit summons served in tamil.

4.The petitioner was set exparte on 20.08.2002. Thereafter, case was adjourned to 19.09.2002 and finally to 23.09.2002 for recording the exparte evidence. On 23.09.2002, an exparte decree was passed by the Court.

5.The petitioner there filed I.A.No.249 of 2003, to condone the delay of 212 days in filing the application to set aside the exparte decree dated 23.09.2002 under Section 5 of Limitation Act.

6.By the impugned order the court below has dismissed the application. The Court below dismissed the application with the

observation that there was no sufficient reasons in the affidavit to condone the delay since the delay has not been properly explained.

7. Though, the respondent has been served notice in the present Civil Revision Petition, there is no representation on behalf of the respondent. Today also there is no representation though the name of the respondent has been printed in the cause list. Therefore, the present Civil Revision Petition is being taken up for hearing.

8. After going to the records of the case it is noticed that the suit was decreed ex parte on 23.09.2012. It however bears no reasoning. Therefore, the order passed by the court deserves to be set aside even though the petitioner has not properly explained the delay in filing the application to set aside the ex parte decree dated 23.09.2012.

9. Further, the suit was filed for a specific performance pursuant to a sale agreement allegedly executed by the petitioner in favour of the respondent on 14.12.2001. The Court ought to have decided the case on merits especially when the petitioner was

absent and mere passing of an ex parte judgment and decree without any discussion is not sufficient as the relief by way of specific performance is a discretionary remedy. Therefore, while interfering with the order of the lower Court and to balance the interest of the respondent, the petitioner is directed to compensate the respondent by way of cost. The petitioner shall deposit a sum of Rs.20,000/- as cost to the credit of the suit within four weeks from the date of receipt of a copy of this order. On such deposit respondent/plaintiff shall be entitled for payment out and is at liberty to withdraw the same.

10. On such deposit, the lower Court is directed to dispose the suit within six months from the date of receipt of a copy of this order after ensuring a proper notice is served on the respondent/plaintiff.

11. The present Civil Revision Petition stands allowed with the above observations.

27.03.2019

Index:Yes/No
Internet :Yes/No

jen

To

1.The Subordinate Court,
Hosur.

2.N.M.Venkatesh,

S/o.Mr.Muniappa,
Nallur Village, Bedamangala P.O.,
Bangarapettai T.K.
Kolar District.

3.The Section Officer,

V.R.Section, High Court, Madras.



WEB COPY

C.SARAVANAN, J.

jen



C.R.P.(NPD).No.369 of 2014

WEB COPY

27.03.2019