

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3034 of 2019

M.Siddeswaran

... Petitioner

Vs.

A.Senthamarai

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to direct the Hon'ble III Additional District Judge, Salem to number the application in I.A.SR.No.1298 of 2019 in O.S.No.187 of 2018 on his file and decide the same on merits and in accordance with law.

For Petitioner

: Mr.R.Neelakandan

ORDER

This revision petition has been filed against the return memo dated 24.07.2019 whereby the Court below returned the application of the petitioner/plaintiff in I.A.SR.No.1298 of 2019 in O.S.No.187 of 2018 on the file of the III Additional District Judge, Salem.

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2.The revision petitioner was the plaintiff, who filed the suit for specific performance and the said suit, by way of *ex parte* decree,

decreed on 07.12.2018, wherein the plaintiff was directed to pay the remaining sale consideration to the defendant and on receipt of the same, the defendant shall execute the sale deed i.e., completion for specific performance.

3.Pursuant to the decree, even though the petitioner was ready with money towards the remaining sale consideration and a time has been made to pay the same, the defendant has not responded or has not received the remaining sale consideration and to execute the sale deed, as directed in the decree. Therefore, the petitioner filed the present application seeking permission from the Court below to deposit the said remaining sale consideration. However, the same has been returned with the present return memo, which is impugned herein, stating that, already a time has been fixed to deposit the balance sale consideration, therefore, no further permission required as mentioned in the petition, accordingly, the same was returned.

4.I have heard Mr.R.Neelakandan, learned counsel for the petitioner and I have gone through the materials placed before this Court, including the impugned return memo. If at all the lower Court

wants to decide to reject the application on merits, by way of acceptable or plausible reason, the application should have been entertained and thereafter, after giving an opportunity of being heard to the petitioner, the application can be decided on merits. But without even entertaining the same, the application has been returned and in the return memo, it is unnecessarily some reason has been given on merits of the application. Therefore, this Court feels that, such an action on the part of the lower Court, in returning the application, by giving some reason on the merits of the application, without even entertaining the same, is bad in law.

5. In that view of the matter, this Court is inclined to dispose of the civil revision petition with the following direction:

The Court below is hereby directed to entertain the application in question and decide the same on merits and in accordance with law, within the meaning of Section 148 of the Civil Procedure Code, as to whether the petitioner/plaintiff is entitled to get extension of time or is entitled to get an order from the Court below permitting him to deposit the remaining sale consideration, as has been directed in the decree and accordingly, the said application can be disposed of on merits.

6.With this direction, this Civil Revision Petition is ordered accordingly. No costs.

17.09.2019

Sgl

Note:

Office is directed to return the original, if any, filed by the petitioner, enabling him to file the same before the Court below, along with copy of this order.

To

The III Additional District Judge,
Salem.

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