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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.4031 of 2019
and
C.M.P.No.26439 of 2019

Sri.P.L.Narasinga Rao

... Petitioner

-Versus-

Smt.Nirmala Bai

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and adjudications dated 06.11.2019 simply following the orders and adjudications dated 07.02.2019 in OS.No.6462 of 1999 by the learned XVII Assistant Judge,City Civil Court, Chennai.

For Petitioner : Mr.S.Krishnasamy

For Respondent(s) : Mr.Balan Haridoss

ORDER

This civil revision petition is directed against the order restoring the suit in O.S.No.6462 of 1999 filed by the respondent as per the order of this court dated 22.11.2018 made in C.R.P.No.2375 of 2013.

2. The petitioner herein is the defendant in the suit. The respondent herein filed the above said suit for delivery of sale deed dated 16.11.1987 registered as Doc.No.1241 of 1987. Earlier, the suit was dismissed for default. The application filed by the respondent for restoration of the suit came to be dismissed. On a revision filed by the respondent, the order of the court below refusing to restore the suit came to be set aside and the suit was directed to be restored on payment of cost of Rs.10,000/- and on payment of additional cost of Rs.1,000/- within a period of four weeks. Subsequently, a memo came to be filed before the court below by the respondent stating that the cost was paid to the petitioner by way of



demand draft which was sent through registered post. Based on such memo, the court below restored the suit. Alleging that the cost has not been paid by the respondent, the defendant is before this court with the present revision petition.

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3. This revision petition is coming up today for admission. The respondent is represented by Mr. Balan Haridoss, Advocate.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the records carefully.

5. The learned counsel for the petitioner would vehemently contend that the respondent did not pay the cost as directed by his court and without even paying the cost, the respondent had filed a memo making a false statement as if the cost had been paid to the petitioner by way of demand draft sent through post and the court below also without even verifying the real state of position as to whether the cost had been paid or not, simply restored the suit to its file. The learned counsel for the petitioner therefore submitted that it was only a deliberate attempt on the part of the respondent to drag on the suit proceedings.

6. Per contra, the learned counsel for the respondent would contend that as per the order of this court a demand draft was drawn for Rs.11,000/- in favour of the petitioner and the same has been sent through registered post. The learned counsel has also filed a xerox copy of tracking sheet to show that the post has been delivered.

7. Earlier this court directed the respondent to verify as to whether the demand draft has been encashed or not. Today, after verification, the learned counsel for the respondent would fairly admit that the demand draft has not been encashed by the petitioner. According to him, though the post was delivered at the address, the whereabouts of the post containing the demand draft is not known till date.

8. Be that as it may, the materials available on record would clearly go to show that the respondent had promptly drawn a demand draft in favour of the petitioner for Rs.11,000/- towards the cost as directed by this court and sent the same through post, but the demand draft went missing and the whereabouts of the demand draft is not known till now. The learned counsel for the respondent has also produced a Xerox copy of the demand draft. But, the demand draft was not encashed by the petitioner till date.



9. At this juncture, the learned counsel for the respondent would, on instructions, fairly submit that the respondent had already entrusted him a cash of Rs.11,000/- so as to pay the same to the respondent towards the cost as directed by this court and if this court directs, he is ready to pay the same to the counsel for the petitioner across the bar. Since the demand draft has not been encashed and in order to give quietus to the issue, without making any further probe on the issue, this court is inclined to close this revision petition with a direction to the learned counsel for the petitioner to receive the cost from the learned counsel for the respondent.

10. Accordingly, the learned counsel for the respondent, today, across the bar, paid a sum of Rs.11,000/- by way of cash to the learned counsel for the petitioner and the learned counsel for the petitioner had also received the cost.

11. In the result, Recording the payment of cost, this civil revision petition is closed. However, considering the fact that the suit is pending since 1999, the court below is directed to take up the suit for trial and dispose of the suit after giving sufficient opportunities to both parties within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The XVII Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.106165

Civil Revision Petition No.4031 of 2019

RK(CO)
CB(15/07/2020)