

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD). No.2347 of 2010

C. Chandrasekaran ... Petitioner

Vs

N. Sekar ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.03.2010 made in I.A. No. 79 of 2010 in O.S. No. 159 of 2009 on the file of the Court of District Munsif cum Judicial Magistrate No. I, Walajapet.

For Petitioner : Ms. M.R. Sakunthala
for Mr. T.P. Prabakaran

For Respondent : No appearance

ORDER

This matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 24.03.2010 made in I.A. No.79 of 2010 in O.S. No.159 of 2009 on the file of the Court of District Munsif cum Judicial Magistrate No. I, Walajapet.

2. The petitioner is the plaintiff and respondent is the defendant in O.S. No.159 of 2009 on the file of the Court of District Munsif cum Judicial Magistrate No.I, Walajapet. The petitioner filed the said suit for specific performance of agreement of sale dated 12.12.2006. On 01.02.2010, the suit was decreed exparte, granting 15 days time to the petitioner to deposit the balance amount of Rs.5,000/-. The petitioner failed to deposit the said amount within the time granted by the Court and filed petition in I.A. No.79 of 2010 for extension of time by one month for depositing the balance sale consideration amount of Rs.5,000/-. The said I.A. was dismissed by the learned Judge.

3. Against the said order of dismissal dated 24.03.2010 made in I.A. No.79 of 2010 in O.S. No.159 of 2009, the petitioner has come out with the present Civil Revision Petition.

4. Learned counsel appearing for the petitioner contended that the petitioner could not deposit the amount as he suddenly fell ill and was bedridden till 20.02.2010 and after recovery, he arranged funds and filed the petition. In view of the same, the delay of 8 days has occurred. The learned counsel appearing for the petitioner further contended that the learned Judge without properly considering the reason given by the petitioner, has held that the bonafide of agreement is in doubt as 3 years time has been granted for payment of balance amount of Rs.5,000/-. The reason given by the learned Judge is erroneous as the suit has already been decreed, granting the relief as prayed for and prayed for setting aside the order of the learned Judge and allowing the I.A. No.79 of 2010 and the Civil Revision Petition.

5. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. The petitioner has sought for extension of time to deposit the balance sale consideration amount of Rs.5,000/- on the ground that after decree of specific performance was passed, he suddenly fell ill and was bed ridden and due to that, he could not deposit the balance sale consideration in time as per the decree. From the materials on record, it is seen that the suit was decreed exparte, when the petitioner filed proof affidavit on 01.02.2010. The petitioner was aware of the exparte decree and time granted by the Court on that day itself. The petitioner has not furnished any detail as to the nature of illness and as to when he became ill and bedridden. In a suit for specific performance, the plaintiff must be always ready and willing to perform his part of contract. In the present case, the petitioner ought to have deposited the balance sale consideration within time limit granted by the Court and the reason given by the petitioner for not depositing the balance amount within the time limit is not valid as he has not furnished any particulars about the illness. In view of the same, the order of the learned Judge dated 24.03.2010 made in I.A. No.79 of 2010 in O.S. No.159 of 2009 is not interfered with.

8. The observation of the learned Judge that there is doubt about the genuineness of the agreement of sale and that petitioner is not entitled to equitable relief of specific performance is erroneous as the suit has already been decreed granting specific performance.

9. In the result, the Civil Revision Petition is dismissed. No costs.

23.09.2020

gsa

Index: Yes/No

To

The District Munsif cum
Judicial Magistrate No. I,
Walajapet.



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V.M.VELUMANI,J.

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