

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2020

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The Honourable Mr.Justice D.KRISHNAKUMAR

**C.R.P(NPD)No.1090 of 2020
and C.M.P.No.5929 of 2020**

T.H.Nazar

...Petitioner

Versus

R.Babu

....Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 29.08.2019 in I.A.No.364 of 2018 in O.S.No.7 of 2013, on the file of Principal District Judge, Villupuram.

For Petitioner : Mr.R.Krishna Prasad

ORDER

The relief sought for in the present Civil Revision Petition is to set aside the fair and decreetal order dated 29.08.2019 passed by the learned Principal District Judge, Villupuram in I.A.No.364 of 2018 in O.S.No.7 of 2013.

2. The plaintiff is the respondent herein and the fifth defendant is the petitioner herein.

3. The case of the petitioner is that the suit O.S.No.7 of 2013 has been filed by the respondent for the following reliefs:

(i) for specific performance of contract dated 07.03.2012 directing the defendants 1 & 2 to execute sale deed in favour of the plaintiff in respect of the suit property at the expense of the plaintiff after receiving the balance of Rs.1,00,000/- failing which, the Court itself may execute sale deed in respect of the suit property in favour of the plaintiff within a time stipulated by Court;

(ii) pass a decree declaring that the General Power of Attorney Deed dated 17.09.2012 duly registered as Doc.No.258 of 2012 on the file of Sub Registrar, Vanur, executed by defendants 1 & 2 in favour of 3rd defendant is null and void *ab initio*;

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(iii) Consequentially, pass a decree declaring that the two sale deeds dated 18.09.2012 executed in favour of 4th defendant under document No.5031 of 2012 and executed in favour of defendants 5 & 6 under Document No.5032 of 2012 on the file of Sub Registrar, Vanur by defendants 1 & 2 is null and void *ab initio*;

(iv) pass a decree for permanent injunction restraining all the defendants from in any manner encumbering or alienating the suit property in favour of third parties;

(v) award costs of the suit.

4. When the suit came up before the trial Court on 28.01.2015, the defendants were absent and that they were set *ex parte*. Therefore, the learned Principal District Judge, Villupuram had decreed the suit as prayed for. Against the said *ex parte* judgment and decree, the petitioner/fifth defendant filed an Interlocutory Application in I.A.No.364 of 2018 against the respondent/plaintiff, before the Principal District Court, Villupuram. By order dated 29.08.2019, the learned Principal District Judge, Villupuram has dismissed the said Interlocutory Application. Aggrieved by the order of

dismissal, the petitioner/fifth defendant has filed the present Civil Revision Petition before this Court for the relief stated *supra*.

5. The learned counsel for the petitioner submitted that the petitioner has filed I.A.No.364 of 2018 under Section 5 of Limitation Act for condoning the delay of 1,368 days in filing Order IX Rule 13 Petition for setting aside the *ex parte* decree dated 28.01.2015. The petitioner is a *bonafide* purchaser of the property since he purchased the said property through a valid sale deed dated 18.09.2012. He further submitted that the petitioner had fell ill due to jaundice and was taking treatment in his native village and that the delay has occurred. The learned Principal District Judge, Villupuram without even considering the reasons stated by the petitioner for the delay of 1,368 days in filing Order IX Rule 13 Petition had dismissed I.A.No.364 of 2018. He therefore prayed that the impugned order passed by the learned Principal District Judge, Villupuram is liable to be set aside.

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

7. It is pertinent to mention that in the case of ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another reported in (2015) 1 SCC 680***, the Honourable Supreme Court has held as follows:

"24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the Court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

D.KRISHNAKUMAR, J.,

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8. In view of the decision taken by the Honourable Supreme Court in the case of *H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another reported in (2015) 1 SCC 680*, this Court is of the opinion that the petitioner's case deserves no merit of consideration. Hence, this Civil Revision Petition is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

To

The Principal District Judge,
Villupuram.

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