

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2020

PRONOUNCED ON : .02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.2576 of 2013

A.K.Sathiyamoorthy ...Petitioner/Plaintiff

Vs.

1.Santhi

2.Karpagavalli

3.Sumathi

4.Malathi

5.Asokan

[Respondents 1 to 4 are represented by the
fifth respondent viz., Asokan as Power of Agent]

...Respondents/
Defendants

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside fair and final orders dated 28.02.2013, passed in I.A.No.1397 of 2012 in O.S.No.848 of 2007, on the file of the learned Additional District Munsif, Namakkal.

For Petitioner : Mr.R.Nalliyappan

For R1 to R3 : Mr.K.A.Mariappan

For R4 & R5 : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Additional District Munsif, Namakkal, in I.A.No.1397 of 2012 in O.S.No.848 of 2007, dated 28.02.2013.

2 The plaintiff in the suit in O.S.No.848 of 2007 is the revision petitioner.

3 Brief facts of the case are as follows:

The revision petitioner/Plaintiff has filed a suit in O.S.No.848 of 2007, before the learned District Munsif, Namakkal, for specific performance of the suit sale agreement dated 31.03.2007 and the said suit was decreed ex-parte on 18.03.2008. Thereafter, revision petitioner/plaintiff has filed an application in I.A.No.1397 of 2011, under Section 151 of CPC to condone the delay of 1379 days in depositing the balance of sale consideration in the Court. After contest, the said application was dismissed. As against the same, the revision petitioner/plaintiff has preferred the Civil Revision Petition before this Court.

4 Heard both the counsel and perused the materials placed on record.

5 On a perusal of the records, it is seen that the revision petitioner/plaintiff has filed a suit in O.S.No.848 of 2007, before the District Munsif, Namakkal, for the specific performance of the suit sale agreement dated 31.03.2007 and the same was decreed

ex-parte on 18.03.2008 and the revision petitioner/plaintiff was directed to deposit the balance of sale consideration of Rs.10,000/- within a period of two months and he was granted one month time for the execution of the Sale Deed. However, the balance of sale consideration as directed in clause (3) of the decree, the money has not been deposited by the revision petitioner/plaintiff. Thereafter, the revision petitioner/plaintiff has filed an application in IA.No.1397 of 2011 to condone the delay of 1379 days in depositing the balance of sale consideration under Section 151 of CPC, therein, the respondents herein/defendants have filed a counter.

6 In the Trial Court, it is observed that since for a suit for specific performance, ready and willingness of the party is an essential criteria. Despite the Court decree, the revision petitioner/plaintiff has not deposited the balance of sale consideration and sought to file the petition to condone the delay of 1379 days to comply with the conditional order, on the ground that he was fell ill and could not contact his advocate and accordingly rejected the application.

7 The learned counsel for the respondents herein/defendants have contended that during the alleged period of

delay, the very same petitioner is defending a suit in O.S.No. 309 of 2007, before the learned District Munsif, Namakkal and he has also filed plaint, written statement and decree copy in the said suit. As against the judgment passed in the said suit viz., O.S.No.309 of 2007, the revision petitioner/plaintiff has filed an appeal in A.S.No.10 of 2010, before the learned Subordinate Judge, Namakkal, based upon the above deposit.

8 Attention of this Court was drawn by the learned counsel for the respondents to the fact that during the relevant point of time, revision petitioner/plaintiff has effectively conducted the suit. As could be seen from the typed set of papers, the very same revision petitioner/plaintiff with very same Lower Court advocate had conducted the case in the very same Court campus in other suit viz., O.S.No.309 of 2007 and therefore, the alleged illness as alleged by the revision petitioner/plaintiff in the petition is not true. Besides, there is a huge delay of 1379 days, in the absence of any plausible explanation. The Trial Court has rightly dismissed the petition though the petition has been filed under Section 151 of CPC and hence, this Court does not find any reason to interfere in this case.

9 In the result, the Civil Revision Petition stands dismissed and the order passed by the learned Additional District Munsif, Namakkal, in I.A.No.1397 of 2012 in O.S.No.848 of 2007, dated 28.02.2013, is hereby confirmed. No costs.

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Index : Yes / No

Internet : Yes

To

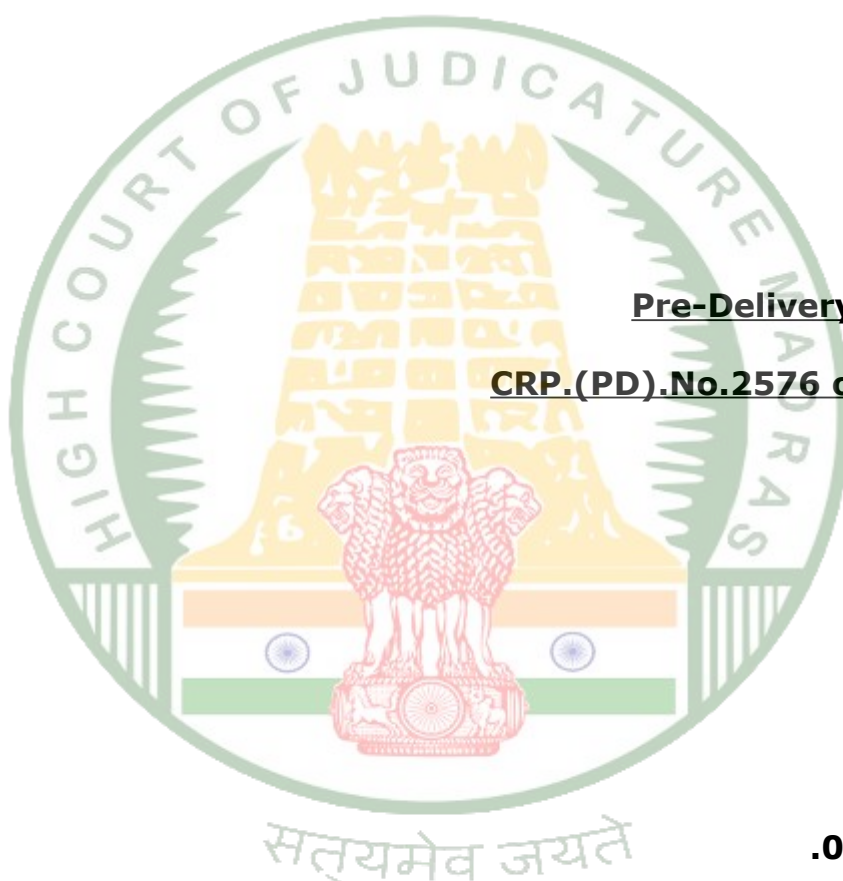
The Additional District Munsif, Namakkal.



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RMT.TEEKAA RAMAN., J

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Pre-Delivery Order
in
CRP.(PD).No.2576 of 2013

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