



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.1587 of 2015

1.Paraman  
2.Annathai

: Petitioners/Petitioners/  
Defendants

.. Vs ..

Sureshkumar Osthaval

: Respondent/Respondent/  
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the docket order passed in I.A.No.449 of 2003 in O.S.No.183 of 2001, dated 03.09.2004 on the file of the Principal District Court, now on the file of the Subordinate Court, Periyakulam.

For Petitioner

:Mr.S.Prabhu

For Respondent

:Mr.R.Sakthivel

for Mr.R.Sundar

### **ORDER**

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Periyakulam in I.A.No.449 of 2003 in O.S.No.183 of 2001, dated 03.09.2004.

2.The revision petitioners are the defendants in the suit in O.S.No.183 of 2001. The said suit was filed by the respondent herein for specific performance of an agreement of sale. It is admitted that the suit was decreed *ex parte* on 09.11.2001. Thereafter, the revision petitioners filed an application to set aside the *ex parte* decree with the delay of 58 days. An application was filed in I.A.No.449 of 2003 under Section 5 of the Limitation Act to condone the delay of 58 days in filing the petition to restore the suit. The said application was allowed by order, dated 26.07.2004 on payment of cost of Rs.350/- to the respondent on or before 02.09.2004. The lower Court made it clear that the petition will stand dismissed, in case, the cost is not paid in time. The matter was again called on 03.09.2004. Since the cost was not paid, the petition in I.A.No.449 of 2003 was dismissed. The petitioners, who are the defendants in the suit, now challenged the order, dated 03.09.2004 dismissing the petition in I.A.No.449 of 2003 for non payment of cost.

3.The learned Counsel for the petitioners fairly conceded that he is not challenging the order directing payment of cost and submitted that he will be satisfied, if sufficient time is given for



payment of cost, so as to allow I.A.No.449 of 2003.

4.This Court is of the view of that the request of the petitioners can be considered, provided that the petitioners are willing to compensate the respondent for the unnecessary delay caused by the revision petitioners. Accordingly, this Court is inclined to dispose of the revision petition in the following terms:

4.1.The order passed by the learned Subordinate Judge, Periyakulam in I.A.No.449 of 2003 in O.S.No.183 of 2001, dated 03.09.2004, is confirmed. However, the revision petition is partly allowed only to enable the petitioners to pay the cost, as directed by the lower Court by order, dated 26.07.2004 within a period of four weeks from the date of receipt of a copy of this order. Upon payment of cost within the time stipulated by this Court, the application in I.A.No.449 of 2003 stands allowed.

4.2.In case, the petitioners fail to pay the cost in time, the revision petition stands dismissed without any reference to Court.

4.3.The revision petitioners shall also pay a sum of Rs.3,000/- to the respondent or respondent's counsel within a period of six weeks from the date of receipt of a copy of this order.

5.The Civil Revision Petition is disposed of accordingly.

Sd/-

Deputy Registrar (LA&MC)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

The Subordinate Judge, Periyakulam.

Copy to

The Section Officer-2 copies

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

C.R.P. (NPD) (MD)No.1587 of 2015

26.08.2020

\_\_KM (03.09.2020) 2P 4C