



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRP.No.1374 of 2020

V.Govindan,
S/o.Venkatachalam,
Residing at Door No.4/116,
Chinnanoor Post, Sukkampatty (via),
Salem - 636 122.

...Petitioner

.Vs.

V.Palaniammal,
D/o.Venkatachalam,
Residing at Chinnanoor Post,
Sukkampatty (via), Salem - 636 122.

...Respondent

PRAYER: Civil Revision petition filed under Article 227 of Constitution of India against the order and decretal order dated 04.02.2020 in I.A.No.01/2019 in O.S.No.458/2016 on the file of the Principal Subordinate Judge at Salem.

For Petitioner : Mr.T.Karunakaran

For Respondent : No Appearance

O R D E R

This Petition is filed challenging the order passed in I.A.No.1 of 2019 in O.S.No.458 of 2016 dated 04.02.2020 on the file of the Principal Subordinate Judge, Salem.

2.Learned Counsel for the Petitioner submitted that the Petitioner filed a Suit in O.S.No.458 of 2016 for the relief of specific performance of the contract on the basis of the sale agreement dated 03.03.2015. Though the Respondent/Defendant entered appearance, she did not participate in the trial. Therefore, the suit was decreed exparte on 21.06.2018 and the Petitioner was directed to pay the balance sale consideration within a period of 30 days from the date of decree. Meanwhile, the Respondent filed a Petition under Order IX Rule 13 and Sec.151 of CPC, for setting aside the exparte decree within the prescribed time. The Petitioner was also served with the copy of that Petition. It is further submitted by the learned counsel for the Petitioner that petitioner was under the



impression that Petition for setting aside the exparte decree would be numbered and posted for hearing. However, that has not happened and therefore, there was a delay in depositing the balance sale consideration into the Court. It is further submitted that a sum of Rs.1,50,000/- was deposited on 19.02.2019 in fixed deposit and the delay was caused because of the Petition filed to set aside the exparte decree. In the said circumstances, the Petitioner filed Petition under Sections 148 & 151 of CPC, for condoning the delay of 322 days in depositing the balance sale consideration. The Respondent remained exparte in that Petition also. However, the learned Principal Subordinate Judge, Salem, for the reason that there is no sufficient reasons given for delay in depositing the sale consideration, dismissed the Petition. Therefore, this Petition is filed to set aside the order of the learned Principal Subordinate Judge, Salem.

3.Considered the submissions of the learned counsel for the Petitioner and perused the records.

4.In the Petition filed for specific performance in O.S.No.458 of 2016, the Respondent entered appearance, but failed to contest the Suit and therefore, exparte decree was passed. Thereafter, Respondent filed Petition under Order IX Rule 13 and Sec.151 of CPC, for setting aside the exparte decree. It is not known why that Petition was not numbered and proceeded further. It is the case of the Petitioner that believing that the Petition to set aside the exparte decree would be numbered and taken up for hearing, balance sale consideration was not deposited in time. It is seen that notice was also taken in the Petition filed to condone the delay in depositing the balance sale consideration, but the Respondent remained exparte. Even in this Civil Revision Petition also, though the Respondent was served and his name is printed in the causelist, no one filed vakalat for him. It shows that the Respondent is not interested in diligently prosecute the matter. Taking into consideration the entire factual situation of this case, the fact that Petitioner succeeded in getting a specific performance decree, this Court is of the considered view that, merely because there is delay in depositing the balance sale consideration, Petitioner should not be denied the relief of specific performance. He has valid reason that he believed that Petition for set aside the exparte decree filed by the respondent would be numbered and taken up for hearing.

5.In the said circumstances, this Court is of the considered view that the Petitioner should be given an opportunity to deposit the balance sale consideration into the Court. This amount is already lying in bank deposit.



6. In this view of the matter, order passed in I.A.No.1 of 2019 in O.S.No.458 of 2016 dated 04.02.2020 by the Principal Subordinate Judge, Salem is set aside and I.A.No.1 of 2019 in O.S.No.458 of 2016 is allowed. The Petitioner is permitted to deposit the balance sale consideration within a period of one month from today before the trial Court and the trial Court is directed to proceed further in accordance with law.

7. Accordingly, the Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sai

To

The learned Principal Subordinate Judge,
Subordinate Court,
Salem.

+1cc to Mr.Mr.T.Karunakaran, Advocate, S.R.No.54109

CRP.No.1374 of 2020

PPA[CO]
NSK 26/10/2021