



CRP.No.4023 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.4023 of 2016
and CMP.No.20313 of 2016

Kalaiselvi

... Petitioner

Vs.

1.Raja
2.Minor Nirmal Kumar
rep. by court Guardian
A.Kutbudeen, Advocate

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 27.07.2015 made in IA.No.93 of 2013 in OS.No.42 of 2008 on the file of the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District

For Petitioner : Mr.T.P.Prabakaran

For Respondents

For R1 : No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 27.07.2015 made in IA.No.93 of 2013 in OS.No.42 of 2008 on the file of the District Munsif cum Judicial Magistrate No.I,



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Walajapet, Vellore District, thereby allowed the petition to permit the first respondent to deposit the remaining sale consideration on or before 07.08.2015.

2. Heard, Mr.T.P.Prabakaran, the learned counsel appearing for the petitioner.

3. The first respondent filed suit as against the petitioner and the second respondent for specific performance. The said suit was partly decreed in favour of the first respondent in OS.No.42 of 2008 by the judgment and decree dated 24.08.2009. The trial court directed the first respondent to deposit the balance sale consideration of Rs.5,000/- to register the sale deed in favour of the first respondent in respect of half of the suit schedule property within a period of three months from the date of the decree. However, the first respondent failed to deposit the same and filed application to extend the time granted by the trial court for depositing the balance sale consideration amount since there was a delay of 929 days in depositing the balance sale consideration as directed by the trial court.



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4. On perusal of the affidavit filed in support of the said petition, revealed that the first respondent instructed his counsel to file appeal as against the judgment and decree since it was partly allowed. However, his counsel did not prefer any appeal and later he came to know about the same. As per the judgment and decree, the first respondent should have deposited the balance sale consideration of Rs.5,000/- within a period of three months from the date of the judgment and decree. Therefore, he approached another counsel and filed petition for extension of time to deposit the balance sale consideration with the delay of 929 days. On perusal of counter filed by the petitioner revealed that since the first respondent failed to deposit the balance sale consideration for the past more than three years, the second respondent herein started construction in the suit property and he completed construction under Indira Group Housing Scheme of the Government of India. They are living in the suit property. Therefore, without even considering the said counter, the court below mechanically allowed the petition relying upon the provision under **Sections 148 and 151 of CPC**.

5. On perusal of judgment and decree, revealed that the first respondent was directed to deposit only Rs.5,000/- as balance sale



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consideration, that too for half of the suit schedule property within a period of three months from the date of judgment and decree. After the decree, the first respondent did not take any steps to neither file an appeal nor deposit the balance sale consideration amount within the time framed by the trial court. The reasons stated in the affidavit filed in support of the petition for extension of time are also not satisfied and they are vague and false reasons. Therefore, the first respondent failed to explain the delay with proper reason and as such, the trial court ought not to have extended the time for depositing the amount. That apart, there is no evidence to show that even after the order, the first respondent deposited the balance sale consideration amount.

6. In view of the above, the fair and decretal orders dated 27.07.2015 made in IA.No.93 of 2013 in OS.No.42 of 2008 on the file of the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

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

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