



C.R.P.No.1560 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1560 of 2013

and

M.P.No.1 of 2013

1.C.Rukmani
2.C.Thiyagarajan
3.C.Sangeetha
4.C.Dinesh Kumar

... Petitioners

Vs.

V.Rajasekar

... Respondent

Prayer : Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the fair and decretal order dated 07.11.2012 in I.A.No.544 of 2009 in O.S.No.463 of 1994 on the file of the District Munsif Court of Tirupattur, Vellore District.

For Petitioners : Mr.S.Subbiah

For Respondent : M/s.Stalwart Law Firm



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ORDER

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This Civil Revision Petition has been filed against the fair and final order passed in I.A.No.544 of 2009, on the file of the District Munsif Court, Tiruppattur, dated 07.11.2012, allowing the application filed by the respondent under Section 5 of the Limitation Act to condone the delay of 2057 days in depositing the balance sale consideration that was directed to be deposited in a decree for specific performance.

2.The respondent filed a suit for specific performance in O.S.No.463 of 1994 before the District Munsif Court, Tiruppattur. The said suit was decreed by Judgment and Decree dated 10.07.2003 and there was a direction to the respondent to deposit the balance sale consideration, within a period of three months from 10.07.2003. The respondent did not deposit the balance sale consideration as directed in the decree and filed an application in I.A.No.544 of 2009 to condone the delay of 2057 days in depositing the balance sale consideration. The said application was contested by the legal heirs of the judgment debtor and the Court below after considering the rival contentions, proceeded to allow the application through order dated 07.11.2012 and directed the respondent to deposit the balance sale consideration by 19.11.2012. Aggrieved by the same, the present Civil



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Revision Petition has been filed before this Court by the legal heirs of the judgment debtor.

3.Heard Mr.S.Subbiah, learned counsel appearing on behalf of the petitioners and M/s.Stalwart Law Firm appearing on behalf of the respondent.

4.The short point that arises for consideration in this civil revision petition is as to whether the order passed by the Court below in condoning the exorbitant delay of 2057 days in depositing the balance sale consideration, suffers from any perversity.

5.The Court which passes a decree for specific performance retains control over the decree and it has power to extend the time for deposit of the balance sale consideration. Section 28 of the Specific Relief Act, confers the power to the Court to extend the time for deposit in compliance with the decree or order for the recession of the agreement itself for non-compliance of the decree. It is therefore clear that the Court below had the power and jurisdiction to consider an application seeking for extension of time to deposit the balance sale consideration. It has to be seen as to whether the Court below had properly exercised the jurisdiction while



allowing the application filed by the respondent and condoning the delay of 2057 days in depositing the balance sale consideration. The fulcrum of the relief of specific performance is readiness and willingness. The readiness and willingness must continue at all stages right from the date of agreement till passing of the decree and even thereafter, where the judgment debtor is directed to deposit the balance sale consideration within a time frame. This is so, since the relief of specific performance is in the nature of an equitable relief.

6.In the present case, there was a specific direction by the trial Court while decreeing the suit, directing the decree holder to deposit the balance sale consideration, within the period of three months from 10.07.2003. The Court below even without noticing the specific direction issued in the decree, has given a finding as if the decree did not specify any time limit for depositing the balance sale consideration. Such a finding rendered by the Court below suffers from perversity.

7.Apart from the above, the legal heirs of the judgment debtor had taken a very specific stand in the counter affidavit to the effect that pursuant to the decree passed by the trial Court, there was a compromise between the parties and the legal heirs of the judgment debtor paid the entire



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amount with interest and it was received with full satisfaction and that is the reason why the decree holder did not proceed to deposit the balance sale consideration and get the decree executed. This stand taken by the legal heirs of the judgment debtor has not even been considered by the Court below. The Court below has merely stated that the legal heirs of the judgment debtor did not approach the Court to cancel the decree and hence, the Court had the power to extend the time limit for payment of the balance sale consideration.

8.The Court below lost sight of the fact that the decree holder had approached the Court to condone the exorbitant delay of 2057 days in depositing the balance sale consideration and Court below ought to have seen as to whether there were justifiable reasons for the decree holder to knock the doors of the Court with such a delay. The Court below merely went by the power and jurisdiction vested to it under Section 28 of the Specific Relief Act and failed to properly exercise the jurisdiction while considering the application. The order passed by the Court below suffers from illegality and infirmity, which requires the interference of this Court.

9.In the light of the above discussion, the fair and final order passed by the Court below in I.A.No.544 of 2009 in O.S.No.463 of 1994, dated



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N. ANAND VENKATESH, J.

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07.11.2012, is hereby set aside. In view of the non-explanation of the exorbitant delay in depositing the balance sale consideration, there shall be recession of the agreement itself due to the non-compliance of the decree.

10.As a result, this Civil Revision Petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

08.12.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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To

The District Munsif, Tirupattur, Vellore District.

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