



C.R.P.No.1985 of 2019

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V. LAKSHMINARAYANAN,J.

By an order of this Court, dated 14.12.2022, an application in I.A.No.355 of 2016 was condoned on the condition that Civil Revision Petitioner pays a sum of Rs.50,000/- to the respondent. Thereafter, an application was filed for extension of time on the ground that inadvertently the cost was not paid. Therefore, I granted time till 25.09.2023 to pay the cost and report to me.

2. Mr.Nandagopal, for Mr.R.Rajarajan, learned counsel for the petitioner represents that the cost of Rs.50,000/- had been sent by way of a Demand Draft to the respondent. Ms.Sri Ranjani for Mr.T.P.Prabakaram, learned counsel for the respondent represents that the cost has been received.

3. In the light of the above, the compliance has having been taken place, the learned trial Judge is requested to restore O.S.No.203

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Gba

of 2013 on its file and comply with the directions issued by this Court
dated 14.12.2022.

26.09.2023

gba

To

The Subordinate Judge,
Ranipet.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1985 of 2019

and

C.M.P.No.12913 of 2019

Boopalan Petitioner/defendant

Vs

A.P.Kirubakaran Respondent/plaintiff

Prayer :- Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the order and decree dated 07.03.2019 in I.A.No.355 of 2016 in O.S.No.203 of 2013 on the file of the Subordinate Judge, Ranipet, Vellore District.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr.T.P.Prabakaran

ORDER

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This Civil Revision Petition has been filed to set aside the order and decree dated 07.03.2019 in I.A.No.355 of 2016 in O.S.No.203 of 2013 on the file of the Subordinate Judge, Ranipet, Vellore District, thereby dismissing the petition to condone the delay of 618 days in filing the petition to set aside the ex-parte decree.

2. The petitioner is the defendant in the suit filed by the respondent herein for specific performance. According to the respondent, the petitioner agreed to sell the suit property for a total sale consideration of Rs.1,25,000/- and on 28.10.2010, he received a sum of Rs.1,00,000/- as advance and he also handed over the original title deeds to the respondent herein. As per the agreement, the remaining sale consideration should be paid within a period of three years. On receipt of the same, the petitioner ought to have registered the sale deed in favour of the respondent. Though the respondent settled the balance sale consideration, the petitioner was not willing to come forward to register the sale deed. On receipt of the suit summon, the petitioner failed to appear before the Court below. Further, he failed to file any

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written statement and as such, he was set ex-parte and an ex-parte decree was passed as against the petitioner by a Judgment and Decree dated 08.09.2014. In pursuant to the said decree, the respondent filed an execution petition in E.P.No.76 of 2014. On receipt the execution notice, the petitioner came to know about the ex-parte Decree and engaged a counsel and filed a petition to condone the delay of 618 days in filing the petition to set aside the ex-parte decree.

3. A perusal of the affidavit filed in support of the condone delay petition reveals that the petitioner was suffering from Jaundice and as such, he could not instruct his counsel to file a written statement. In the execution petition also the petitioner has engaged the very same counsel. In the suit, he was set ex-parte and subsequently had filed a petition to set aside the ex-parte decree in E.P.No.76 of 2014. Subsequently it was set aside and the execution petition was posted for filing counter. Further as per the agreement for sale, the total sale consideration was fixed at Rs.1,25,000/- in which on the same date of agreement for sale, the respondent paid a sum of Rs.1,00,000/- as

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advance and for the remaining amount of Rs.25,000/- a period of three years was fixed. No prudent man would enter into such an agreement of sale, fixing three years for paying the remaining sale consideration of Rs.25,000/-.

4. According to the petitioner, it was executed only for security purpose. He borrowed a sum of Rs.50,000/- from the respondent and at the time of registering the mortgage deed the respondent misrepresented and obtained signature in the alleged said agreement for sale. Therefore, the petitioner has got good case to defend the suit. Hence, he may be given one more opportunity to defend the suit in accordance with law. Now, no sale deed is executed in favour of the respondent.

5. In view of the above, the order dated 07.03.2019 in I.A.No.355 of 2016 in O.S.No.203 of 2013 on the file of the Subordinate Judge, Ranipet, Vellore District. is hereby set aside on condition that the petitioner shall deposit a sum of Rs.50,000/- to the credit of the suit in O.S.No.203 of 2013 on the file of the Subordinate

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Judge, Ranipet, on or before 23.01.2023, failing which, the order passed by this Court shall stand automatically cancelled. On such deposit, the Trial Court is directed to restore the suit to its original file and proceed to dispose of the same in accordance with law within a period of six months thereafter.

6. In the result, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

14.12.2022

Index:Yes/No

Internet:Yes/No

Lpp

Note : Issue order copy on 23.12.2022

To

The Subordinate Judge,
Ranipet.



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