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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CRP.No.1906 of 2021
& CMP.No.14806 of 2021

G.Rajavel

...Petitioner/Petitioner/5th Defendant

Vs

K.Venkatesan

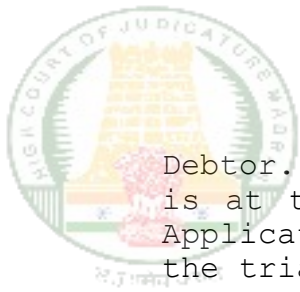
...Respondent/Respondent/Plaintiff

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A. No.75 of 2020 in O.S.No.147 of 2008 on the file of the Sub Court, Kanchipuram dated 03.08.2021 and allow the CRP.

For Petitioner	:	Mr.M.Devendran
For Respondent	:	Mr.S.Parthasarathy, Senior Counsel for Mr.P.Dinesh Kumar

O R D E R

The fifth defendant in a suit for specific performance challenges an order in I.A.No.75 of 2020 dismissing his Application for condoning the delay of 3782 days in filing an Application under Order 7 Rule 13 CPC to set aside the ex-parte decree. The suit is laid for specific performance on the basis of a sale agreement which the plaintiff claims that he had obtained from the first defendant. The fifth defendant herein is the purchaser from the Power of Attorney (fourth defendant) of the son and grandson of the first defendant (defendants 2 and 3). Before the trial Court, defendants 1 to 4 remained ex-parte and an ex-parte decree came to be passed on 09.04.2009. The decree was put to execution and a sale deed came to be executed by the Execution Court on behalf of the first defendant/Judgment



Debtor. Delivery of the property however, was not taken and it is at this juncture, the fifth defendant has filed the present Application for condoning the delay. This was not contested and the trial Court dismissed the matter.

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2.The learned counsel for the Revision Petitioner submitted that earlier the fourth defendant/Power of Attorney of defendants 2 and 3, who executed the sale deed in favour of the fifth defendant had taken out a similar Application for condonation of delay of 793 days for bringing out an Application under Order 9 Rule 13 and this came to be dismissed by the trial Court and that, challenging the same, CRP.No.3361 of 2017 came to be filed and the same was allowed on a cost of Rs.50,000/-. In deed, this Court has also cancelled the sale deed executed by the Executing Court and has thrown open the entire issue raised in the suit. The learned counsel submitted inasmuch as the suit is now pending trial, it is only appropriate that the fifth defendant/revision petitioner may also be given a chance to participate in the trial.

3.Heard, the learned counsel for the respondent/plaintiff. He submitted that this Revision petitioner was impleaded essentially because he holds a sale deed executed by the son and grandson of the first defendant, that no relief was sought against him, that he was impleaded essentially as a proper party to the litigation, rather than a necessary party to the litigation. He also added in a suit for specific performance, the dispute over conflicting title cannot be decided. The learned counsel added that in the eventuality of this Court allowing this Revision, it may take into consideration that the respondent/plaintiff has already spent about Rs.1,50,000/- on stamps while obtaining the sale deeds executed by the Execution Court.

4.Inasmuch as the suit is still pending trial, this Court considers that it may not be appropriate to deny the revision petitioner an opportunity of participating in the trial. Having said that, his conduct in not participating in the trial for considerable time has obviously inconvenienced the plaintiff, so much so, he had to spend about Rs.1.5 Lakhs on stamps alone. This may have to be recompensated in a certain way and hence, this Revision is allowed on the revision petitioner paying a cost of Rs.50,000/- to the respondent/plaintiff on or before four (4) weeks from the date of receipt of a copy of this order. The trial Court is also required to complete the trial as expeditiously as possible and not later than four (4) months from the date of communication of a copy of this order, excluding the intervening summer recess.



5.The Civil Revision Petition is allowed as above. No costs.
Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Tsg

To

The Sub Court,
Kanchipuram.

+1cc to Mr.M.Devendran, Advocate SR. No.17498

+1cc to Mr.P.Dinesh Kumar, Advocate SR. No.17372

CRP.No.1906 of 2021

SPD (CO)

PR (18/03/2022)