



CRP No.2217 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

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

CRP.No.2217 of 2019
and C.M.P.No.14338 of 2019

P.Muruganandam
Petitioner

..

Versus

S.Kaliappan

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 11.04.2019 made in I.A.No.961 of 2017 in O.S.No.286 of 2015 on the file of the Sub Court, Pollachi by allowing the civil revision petition.

For Petitioner : Mr.S.Kousik
for Mr.V.Anandhamurthy

For Respondents : Mr.C.Prabakaran

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 11.04.2019 made in I.A.No.961 of 2017 in O.S.No.286 of 2015 on



the file of the Sub Court, Pollachi, thereby dismissed the petition sought to condone the delay of seven days for filing application to set aside the exparte decree.

2. The respondent/plaintiff filed a suit for specific performance on the strength of an unregistered agreement for sale. On receipt of the suit summons, the petitioner failed to appear before the Trial Court and as such, an exparte decree was passed on 18.01.2016. Immediately, after seven days, the petitioner filed an application for setting aside the exparte decree. However, the said application was dismissed on the grounds that the sale deed was already executed with regard to the suit property in favour of the respondent/plaintiff in E.P.No.88/2016 dated 19.09.2017 and sufficient reasons were not properly explained by the petitioner herein.

3. On perusal of the affidavit filed in support of the petition seeking condonation in delay of seven days, it would indicate that the knowledge about exparte decree is only after seven days. Therefore, there was a delay in filing the application.



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4. It is also seen that the respondent/plaintiff filed a suit for specific performance on the strength of the unregistered sale deed. According to the respondent/plaintiff, the suit property valued at Rs.2 lakhs only on the date of agreement for sale dated 18.06.2012. The respondent/plaintiff herein paid a sum of Rs.1,50,000/- to the petitioner herein and for the remaining balance sale consideration, time was fixed for three years till 17.06.2016. Thereby, the petitioner failed to come forward to receive the balance sale consideration and execute the sale deed in favour of the respondent/plaintiff.

5. On considering the facts and circumstances of this case, this Court is of the view that the petitioner has got valid defence to defend the suit filed by the respondent/plaintiff and hence, the petitioner has to be given one more opportunity, since, the delay is very meager. Therefore, this Court hold good to set aside the fair and decreetal order dated 11.04.2019 made in I.A.No.961 of 2017 in O.S.No.286 of 2015 on the file of the Sub Court, Pollachi and consequently, this Civil Revision Petition stands allowed.

6. The petitioner is hereby directed to file a written statement within a period of seven days from the date of receipt of a copy of this Order and the



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Trial Court is directed to dispose of the main suit within a period of three months thereafter. It is made clear that the validity of the execution of sale deed in favour of the respondent/plaintiff in respect of suit property is subject to the result of the main suit. Till such time, the respondent/plaintiff is refrained from dealing with the suit property. No costs. Consequently, connected miscellaneous petition stands closed.

12.12.2022

Speaking/Non-speaking order

Index : Yes/No

dhk

To

The Subordinate Judge, Pollachi



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