



C.R.P(NPD).No.2106 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(NPD).No.2106 of 2017

and

C.M.P.No.10033 of 2017

C.Suresh

...Petitioner

Vs.

K.Kamiyammal

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and final order dated 03.04.2017 passed in I.A.No.621 of 2016 in I.A.No.295 of 2015 in O.S.No.507 of 2013 on the file of the 1st Additional Sub-ordinate Judge, Coimbatore.

For Petitioner : Mr.D.Vijayababu

For Respondent : Mr.L.Mouli

ORDER

The suit in O.S.No.507 of 2013 was filed by the respondent herein before the I-Additional Sub-Court at Coimbatore, seeking specific performance of an agreement of sale dated 02.05.2012. The one fact, which



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was mentioned is that the total sale consideration was Rs.5,50,000/- and it had been claimed by the respondent / plaintiff that on the date of the agreement, an advance of Rs.5,00,000/- has been paid, which was a substantial portion towards the total consideration and the balance amount payable was only Rs.50,000/-. When an Advocate notice dated 18.12.2012 was issued by the respondent / plaintiff to the petitioner / defendant, it was also received and one further notice was returned with an endorsement “party long absent”.

2.Complaining that, the petitioner / defendant did not come forward to perform his part of the agreement, the suit was filed. As is always the case, the suit did not proceed in a normal way. It had shuttered on its away. It appears that originally, the petitioner herein was set exparte on 27.06.2014. Thereafter, he filed I.A.No.295 of 2015 on 10.12.2014, seeking to set aside the exparte order dated 27.06.2014. The said I.A.No.295 of 2015 was allowed with a condition to pay a sum of Rs.750/- on or before 05.12.2015. The said amount was not paid and therefore, I.A.No.295 of 2015 was dismissed. The respondent / plaintiff was directed



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to lead evidence. She led evidence and an exparte decree came to be passed on 25.01.2016. Thereafter, on 29.08.2016, the revision petitioner herein filed I.A.No.621 of 2016 to condone the delay of 272 days in paying the costs. The said application came to be dismissed by an order dated 03.04.2017. Aggrieved over the same, the petitioner has filed the present revision petition.

3.During the course of the hearing of the application filed to condone the delay, the learned Trial Judge held that since a decree has been passed, the remedy is to set aside the exparte decree and dismissed I.A.No.621 of 2016, on the ground that since such application had not been filed, I.A.No.621 of 2016 is not maintainable.

4.I find no reason to differ with the reasons given.

5.An exparte order had been passed. An application was filed to set aside the exparte order. A conditional order was passed directing payment of costs. If costs could not be paid within the stipulated date, the



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petitioner has to approach the Court to extend the time for payment of costs.

The petitioner had not filed any such application for extension of time.

6.Having failed to file such application, the petitioner cannot now seek to condone the delay in paying costs that too, after the passing of exparte decree. Once an exparte decree has been passed, the petitioner has to necessarily file an application to set aside the exparte decree.

7.This Civil Revision Petition therefore, fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2022

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order



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To-

The I-Additional Sub-ordinate Court,
Coimbatore.



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C.V.KARTHIKEYAN, J.

KKN

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