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C.R.P.(NPD)No.510 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.510 of 2013

1.Habeeb

2.Remija Begum

... Petitioners

VS

Rajammal

.. Respondent

Petition filed under Section 115 of the Code of Civil Procedure against the order passed in I.A.No.577 of 2008 in O.S.No.561 of 2007 dated 11.06.2009 on the file of III Subordinate Judge, Coimbatore.

For Petitioners : Mr.Mohamed Ismail

For Respondent : Mr.C.Deivasigamani

ORDER

O.S.No.561 of 2007 is a suit for specific performance of an agreement for sale. In the said suit, an exparte decree was passed on 16.02.2008. To set aside the exparte decree, an application was presented on 19.02.2008 together with a condone delay of 249 days in filing the



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application. Though the application to set aside the exparte decree was filed on 19.02.2008, it was not processed till 24.10.2008 which has resulted in the delay.

2.Heard Mr.Mohamed Ismail, learned counsel appearing for the petitioners and Mr.C.Deivasigamani, learned counsel appearing for the respondent.

3.The reason given for non appearance in Court is that both the petitioners had fallen sick and therefore who were not in a condition to approach the Court. Perusal of the record says, they had given instructions to the Advocate to file the affidavit and the Advocate also took steps to serve the papers on the learned counsel for the respondent/plaintiff, but did not process the same. Therefore, yet another application was filed in I.A.No.577 of 2008, which came to be dismissed. Against which, the present revision.

4.The learned Judge has come to a conclusion that the petitioners are not entitled to the benefit of condonation of delay on the ground that they have not produced any medical records and further that they have not process the application which was presented on 19.02.2008.

5.Insofar as the first submission is concerned, the petitioners have stated in their affidavit that they were sick. The Court below could have



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taken a liberal interpretation and condoned the delay as sickness is a ground to avoid the Court on the date on which the matter was called for hearing.

6.It is seen that the petitioners had instructed their Advocate to file the petition, but the Advocate had failed to do so, which resulted in the delay. The mistake of an Advocate should not be laid on the door of the party. This position has been settled by the Supreme Court in ***Rafiq and Another v. Munshilal and Another reported in AIR 1981 SC 1400***. However, I cannot be blind to the fact that the petitioners had paid a sum of Rs.2,95,000/- as early as on 2007 and had promptly approached the Court within four (4) months. Therefore, I am inclined to condone the delay and set aside the exparte decree by imposing heavy conditions.

(i) The petitioners shall deposit a sum of Rs.2,95,000/- received from the plaintiff on 03.03.2007 and 01.04.2007 to the credit of the suit.

(ii) Apart from that, they shall pay to the respondent a sum of Rs.33,000/- being the cost in the suit.

(iii) They shall also file their written statement within a period of six (6) weeks from today i.e. on or before 20.09.2023.

(iv) The time for deposit is also co-extensive with the time for filing the written statement. Time is granted till 19.09.2023 to file written



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statement. In case any one of the conditions are not complied with, this civil revision petition shall stand dismissed.

7. With the above observations, this civil revision petition is allowed. No costs.

08.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The III Subordinate Judge,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

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