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C.R.P.Nos.1701 & 1703 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.Nos.1701 & 1703 of 2019
and C.M.P.Nos.10933 & 10940 of 2019

1.M.Arjunan

2.A.Rajmohan

... Petitioners
in both C.R.Ps

Vs.

M.Thiyagaraj

... Respondent
in both C.R.Ps

Prayer in CRP No.1701 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.752 of 2018 in I.A.No.315 of 2017 in O.S.No.235 of 2010, dated 21.02.2019 on the file of the Subordinate Court, Ranipet.

Prayer in CRP No.1703 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.751 of 2018 in I.A.No.314 of 2017 in O.S.No.235 of 2010, dated 21.02.2019 on the file of the Subordinate Court, Ranipet.



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For Petitioners : Mr.K.Nirmal Kumar
in both C.R.Ps

For Respondent : Mr.P.Seshadri
in both C.R.Ps

ORDER

The issue involved in both the Civil Revision Petitions are common and hence, they are taken up together and this common order is passed.

2.The respondent/plaintiff filed a suit in O.S.No.92 of 2008 (transferred and renumbered as O.S.No.235 of 2010) seeking for the relief of specific performance based on the Agreement of Sale dated 31.08.2007.

3.The defendants filed the written statement. However, since they were not effectively prosecuting the suit, they were set ex-parte and an Ex-parte Decree came to be passed in the suit on 22.02.2016.

4.The petitioners/defendants filed I.A.No.314 of 2017 under Section 5 of the Limitation Act to condone the delay of 487 days in filing the petition to set aside



the ex-parte decree. I.A.No.315 of 2017 was filed to set aside the Ex-parte Decree, dated 22.02.2016. Both these applications were taken up and allowed by imposing condition to the petitioners. The petitioners were directed to deposit a sum of Rs.5,000/- towards cost on or before 05.09.2018. The petitioners did not comply with this condition, within the time stipulated by the Court below. As a result, both I.A.Nos.314 and 315 of 2017 came to be dismissed on 06.09.2018.

5.The petitioners filed I.A.No.751 of 2018 to restore the order passed in I.A.No.314 of 2017. Similarly, I.A.No.752 of 2018 was filed to restore the order passed in I.A.No.315 of 2017. That apart, the petitioners also expressed their willingness to comply with the condition imposed by the Court below and to pay the cost a sum of Rs.5,000/- These applications were contested by the respondent/plaintiff by filing counter affidavit.

6.The Court below on considering the rival contentions, came to a conclusion that the petitioners did not approach the Court with clean hands and they were very much aware about the proceedings, since they were appearing in the execution proceedings initiated by the respondent/plaintiff. Accordingly, both



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the applications came to be dismissed by an order dated 21.02.2019. Aggrieved by the same, these Civil Revision Petitions have been filed before this Court.

7. Heard Mr.K.Nirmal Kumar, learned counsel appearing on behalf of the petitioners and Mr.P.Seshadri, learned counsel appearing on behalf of the respondent.

8. In the considered view of this Court, the respondent/plaintiff has sought for a substantive relief of specific performance against the petitioners. This necessarily results in the petitioners losing their property if the ex-parte decree becomes final. Under such circumstances, this Court deems it fit to give one last opportunity to the petitioners to pay enhanced cost fixed by this Court within a prescribed time limit. On such payment of cost, the petitioners must be given an opportunity to defend the suit. Taking into consideration, the substantive rights of the petitioners to defend themselves in the suit which may result in the petitioners losing the property, this Court is inclined to interfere with the fair and decreetal order passed by the Court below.



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9. In the result, the fair and decreetal order passed by the Court below in I.A.No.751 of 2018 in I.A.No.314 of 2017 in O.S.No.235 of 2010 and I.A.No.752 of 2018 in I.A.No.315 of 2017 in O.S.No.235 of 2010, dated 21.02.2019 are hereby set aside and the following directions are issued:

a) The petitioners are directed to pay cost of a sum of Rs.15,000/- directly to the plaintiff on or before 03.02.2023.

b) If the petitioners fail to pay the cost imposed by this Court, within the time limit prescribed, the fair and final order passed by the Court below in I.A.Nos.751 & 752 of 2018, dated 21.02.2019 will stand restored.

c) If the petitioners pay the cost fixed by this Court within the prescribed time limit, a memo shall be filed before the Sub Court, Ranipet and the Court below shall restore the suit and provide an opportunity to the petitioners to defend themselves in the suit. In such



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an event, the Court below is directed to dispose of the suit, within a period of six months.

10.These Civil Revision Petitions are accordingly allowed in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

12.01.2023

Internet : Yes / No
Index : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes / No
SSR

To

The Subordinate Court, Ranipet.

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