



CRP No.1471 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP No.1471 of 221
and CMP No.11558 of 2021

A.Senthilkumar

.... Petitioner

VS

V.Kalaivani

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.22 of 2017 on the file of Principal District Court, Ariyalur dated 29.03.2021.

For Petitioner : Mr.R.Narayanan

For Respondent : Mr.G.Ethirajulu
for Mr.K.Babu

ORDER

O.S.No.22 of 2017 is a suit filed to repay a sum of Rs.27,00,000/- together with interest at 12% p.a from the date of sale agreement dated 04.01.2017 till realisation.



CRP No.1471 of 2021

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2. The plaintiff had entered into an agreement with the defendant and had paid a sum of Rs.27,00,000/-. Thereafter, when the plaintiff approached the defendant for execution of the sale deed, she refused to do the same. Therefore, being left with no other option, the plaintiff presented O.S.No.22 of 2017 for recovery of money.

3. To the said suit, summons were sent to the defendant, but the same were returned as “ *intimation left/door locked*”. Consequently, the Court set the defendant ex-parte and decreed the suit by way of judgment dated 11.08.2018. Pursuant to the decree, the decree holder/plaintiff/civil revision petitioner moved an application for attachment of sale of the property in E.P.No.8 of 2019 on the file of Principal District Court at Ariyalur. Coming to know about the Execution Petition, the respondent filed an application to condone the delay of 231 days in filing the application to set aside the exparte decree in I.A.No.1 of 2019.

4. By order dated 29.03.2021, the learned Judge allowed the application on condition that a sum of Rs.1,000/- be paid by the defendant to the plaintiff



CRP No.1471 of 2021

WEB COPY

5. Heard Mr.R.Narayanan, learned counsel for the revision petitioner and Mr.G.Ethirajulu, appearing for Mr.B.Babu, learned counsel for the respondent.

6. I have carefully perused the case records and have considered the arguments on either side.

7. The facts show that summons were attempted to serve on the defendant, but, the defendant did not receive the same. Hence intimation was left with the defendant. The Court could not serve the summons because the defendant was not available and the endorsement that was made was “*door locked*”. Therefore, the Court had no other option but to set the defendant *exparte*. Nonetheless, the trial Court has exercised its jurisdiction to condone the delay. I do not want to substitute my reason for the same. However, I find that the interests of the plaintiff and the defendant have not been properly balanced.

8. In the light of the above discussions, I am of the view that the delay



CRP No.1471 of 2021

could have been condoned, but the condition could have been slightly more stringent. Accordingly, I modify the condition imposed by the learned Principal District Judge, Ariyalur in I.A.No.1 of 2019 in O.S.No.22 of 2017 dated 29.03.2021 with respect to Clause No.1 of the order by imposing a condition that the defendant shall deposit the suit cost of Rs.1,17,500/- (Rupees One Lakh seventeen thousand five hundred only) to the credit of the suit in O.S.No.22 of 2017 within a period of eight weeks from today. On such deposit, the amount shall be kept in an interest bearing account. Further condition is imposed that the defendant shall file a written statement within a period of six weeks from today.

9. On such deposit, the Court below is requested to take up the application under Order 9 Rule 13 and allow the same. It shall frame issues in the suit and dispose of the suit within a period of nine months from the date *ex parte* decree is set aside.

10. With the above modification, the Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.



WEB COPY



CRP No.1471 of 2021

27.07.2023

Index:Yes/No
Speaking order/Non-speaking order
sr

To

Principal District Court, Ariyalur



WEB COPY



CRP No.1471 of 2021

V.LAKSHMINARAYANAN,J.,

SR

CRP No.1471 of 2021

27.07.2023