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C.R.P. No.3000 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3000 of 2019

and

C.M.P.Nos.19357 of 2019 & 12418 of 2020

1.V.Dakshinamoorthy
2.B.H. Himagiri Babu

.. Petitioners

vs.

1.N.Syamasundara Naidu
2.The Sub-Registrar,
Gudiyatham,
(Exonerated)

.. Respondents

Petition filed under Article 227 of the Constitution of India, praying to allow the above Civil Revision Petition by setting aside the Fair and Decretal order dated 24.03.2017 passed in I.A.No.98 of 2016 in O.S.No.130 of 2014 on the file of the Sub-Court, Gudiyatham.

For Petitioners : Mr.S.Sriram
For Mr.K.Govi Ganesan

For Respondent
(For R1) : Ms.K.Kalpana

(For R2) : Mr.B.Tamilnidhi
Additional Government Pleader (CS)



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ORDER

WEB COPY O.S.No.130 of 2014 is a suit for Specific Performance for an agreement of sale. It was presented by the petitioners against the first respondent herein. The suit resulted in an *exparte* decree on 10.12.2015. To set aside the same, an application was filed together with an application to condone the delay of 65 days in filing the said application. The application was allowed on 02.03.2017, directing payment of costs of Rs.1,000/- by the respondents herein to the petitioners. The matter was next called on 24.03.2017. On that day, the Court recorded that the respondents had refused to receive the cost and permitted the same to deposit into the Court.

2. Heard Mr.S.Sriram for Mr.K.Govi Ganesan, learned counsel for the revision petitioners and Ms.K.Kalpana, learned counsel for the 1st respondent and also heard Mr.B.Tamilnidhi, learned Additional Government Pleader (CS) for the 2nd respondent.

3. Mr.S.Sriram, learned counsel for the revision petitioners would vehemently contend that no application was filed under Section 148 of C.P.C. Therefore, the Court below was wrong in permitting deposit of the



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cost into Court. He would also argue that without an application being filed under Section 148 of C.P.C, the Court below does not have the power to extend time and therefore, prays this Court to allow the revision. He would also submit that pursuant to the order passed by the Court below, an application to set aside the *exparte* decree was numbered, taken up and also dismissed by the trial Court, against which, an appeal is now pending in C.M.A.No.1 of 2022 on the file of the Principal District Judge, Vellore.

4. Ms.K.Kalpana, learned counsel for the 1st respondent strongly rebutted the argument and submitted that it was the petitioners who refused to receive the cost. Therefore, the respondents herein cannot be found to be at fault. She would also submit that as per the discretion exercised by the learned trial Judge, this Court do not interfere under Article 227 of the Constitution of India.

5. This Court carefully considered the arguments on either side. It is true that the *exparte* decree, which has been set aside by the learned Judge, exercising his discretion, on payment of a sum of Rs.1,000/- as costs, which had to be paid on or before 23.03.2017. When the matter



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was called on 24.03.2017, it was represented that the petitioners have refused to receive the costs and therefore, the Court permitted the same to be deposited to the credit of the suit. An application under Section 148 of C.P.C., would have been necessary if the petitioners therein/respondents herein had not tendered the cost to the civil revision petitioners. That is not the case here. The Court has recorded that the petitioners had refused to receive the cost.

6. Recording of the Court is final and it is not a game of chance to be controverted by way of revision or an affidavit to be filed. Recording of the same, that the cost tended was refused, I have to take it to be true and I take it so. Consequently nothing remains in the Civil Revision Petition. The learned Principal District Judge, Vellore is requested to take up C.M.A.No.1 of 2022 and dispose of the same within a period of three months from the date of receipt of a copy of this order.



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7. With the above directions, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.08.2023

Index:Yes/No
Neutral Citation:Yes/No
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To
1. The Sub-Court, Gudiyatham.2
2.The Sub-Registrar,
Gudiyatham,
(Exonerated)

Copy to

1.The Principal District Judge,
Vellore.



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V. LAKSHMINARAYANAN, J.

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