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C.R.P.(NPD)No.3686 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.3686 of 2019

and

C.M.P.Nos.24236 of 2019 and 536 of 2020

Thirumalaisamy

.. Petitioner

VS

Shahul Hameed

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908, against the fair and decreetal order dated 02.07.2019 passed by the Sub Court, Udumalpet, in I.A.No.44 of 2018 in O.S.No.193 of 2013.

For Petitioner

: Mr.K.Ganesan
for Mr.V.Jeevagiridharan

For Respondent

: Mr.B.Gopalakrishnan



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ORDER

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This revision arises against an order under Section 5 of the Limitation Act.

2. The petitioner before me is the defendant in the suit. An agreement was entered into between the plaintiff and the defendant on 10.12.2008. In order to enforce the said agreement, the suit for specific performance as stated above was filed in O.S.No.193 of 2013.

3. On service of summons, the defendant filed a written statement. The matter was listed for evidence of the plaintiff. At that stage, the plaintiff filed proof affidavit, but the defendant did not cross-examine the plaintiff. This resulted in passing of an ex parte decree.

4. The petitioner did not file an application to set aside the ex parte decree in time, but presented it after the delay of 119 days. The reason that he gave was due to jaundice, he was taking native treatment in Kerala. The learned trial Judge was not convinced to the reason and dismissed the application against which, the present revision.



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5. I have heard both sides and perused the materials available on
record.

6. The suit in O.S.No.193 of 2013 is for specific performance. Vital rights relating to the immovable property are involved. The plea that the petitioner was taking native treatment in Kerala shows that he could not have produced any medical evidence for the purpose of substantiating his case that he was suffering from jaundice. Medical sickness is “sufficient cause” not to be in Court. That having been pleaded, the Court below could have taken a liberal view of the matter.

7. I cannot be insensitive to the fact that the plaintiff has been litigating for the past ten years. Therefore, in order to balance the interest of the plaintiff and the defendant, I am inclined to pass the following order:

(i) The fair and decretal order in I.A.No.44 of 2018 dated 02.07.2019 is set aside on condition that the defendant shall pay to the plaintiff a sum of Rs.20,000/- (Rupees Twenty thousand only) on or before 30.09.2023.

(ii) On production of the proof of payment of the cost, the learned



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trial Judge is requested to take up an application filed under Order IX

Rule 13 of C.P.C. and allow the same.

(iii) In case, the cost is not paid, the Civil Revision Petition will stand dismissed.

8. The Civil Revision Petition stands allowed on the above terms.

No Costs. Consequently, connected Miscellaneous Petitions are closed.

22.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

kj/rjr

To

The Subordinate Judge, Udumalpet.



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V. LAKSHMINARAYANAN,J.

kj/rjr

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