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CRP.No.3670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3670 of 2023

and

C.M.P.No.23002 of 2023

Dharanimoorthy

... Petitioner

-Vs-

1.R.Narasimmaraj

2.S.Rajamoorthy

3.A.Krishnaveni

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 19.06.2023 made in R.E.A.No.4 of 2023 in R.E.A.No.81 of 2018 in R.E.P.No.101 of 2017 passed by the learned Subordinate Judge, Mettur, Salem District.

For Petitioner

:

Mr.S.Sasikumar

ORDER

Challenging the impugned order made in R.E.A.No.4 of 2023 in R.E.A.No.81 of 2018 in R.E.P. No.101 of 2017 passed by learned Sub-



Judge, Mettur, Salem District, the decree holder/plaintiff preferred this Civil Revision Petition.

2. Since the relief sought challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. The learned counsel for Revision Petitioner would submit that before the trial court, he filed the suit in O.S.No.74 of 2015 on the file of Sub-Judge, Mettur, Salem District claiming the relief of specific performance against the 3rd defendant Krishnaveni. Subsequently, from the said 3rd defendant Krishnaveni, the respondents 1 and 2 have purchased the property during the pendency of proceedings. In the meanwhile, the plaintiff/decree holder obtained exparte decree and to execute the decree, he filed the execution proceedings in R.E.P.No.101 of 2017. However, during the pendency of proceedings, the purchasers have filed an application in R.E.A.No.81 of 2018 claiming right over the property. In that application, the proof affidavit was filed and the 1st respondent herein was examined as P.W.1 and on that day, he was not cross-examined by the plaintiff. Thereafter, he filed an application in R.E.A.No.4 of 2023 on



27.02.2023 for cross-examination of P.W.1. The said application was objected by the respondents 1 and 2. On considering both side submissions, the trial judge allowed the application on payment of cost of Rs.500/- to be paid on or before 17.06.2023 and the case was posted for hearing on 19.06.2023. Due to lack of communication, the plaintiff was not able to pay the said cost. Hence, the application in R.E.A. No.5 of 2023 was filed before the trial court for grant of two days time and the said application was dismissed by the Executing Court stating that proper reason was not stated. Accordingly, the said application was dismissed. Consequently, R.E.A.No.4 of 2023 was also dismissed. Challenging the said order, the present Civil Revision Petition has been filed.

4. The learned counsel for Revision Petitioner would submit that the executing court ought to have given liberty to pay the cost, since because the non-payment of cost within the stipulated period was neither negligent nor wanton. But, due to non-communication, he was not able to pay the cost, however he prayed to pay the cost within two days. Hence, he has filed an application praying for extension of time, but it was not considered.



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5. Records perused. On perusal of records, it would reveals that the Revision Petitioner filed R.E.A. No. 5 of 2023 praying two days time to pay the said cost of Rs.500/-, but it was not accepted by the Executing Court and without assigning any reason, that application was dismissed. However, under Order XI Rule 148 of C.P.C., the court is empowered to extend the time offered to pay cost, but it was not properly appreciated by the trial judge, which would show his non-application of judicious mind. Therefore, the order passed in R.E.A.No.4 of 2023 is an erroneous one and the same is liable to be set aside. Accordingly, the findings rendered by the trial judge in R.E.A.No.4 of 2023 is liable to be set aside.

6. Furthermore, on perusal of records, it would reveals that from the year of 2015 onwards, the plaintiff approached the court for the relief of decree of specific performance, but in the execution proceedings, he was not given sufficient opportunity and if it is not granted, his valuable right will be defeated. Accordingly, this Civil Revision Petition is allowed and the findings of the learned trial judge in R.E.A.No.4 of 2023 in R.E.A.No.81 of 2018 in R.E.P.No.101 of 2017 is set aside. However, the



trial judge is directed to permit the Revision Petitioner to pay the cost to P.W.1./1st respondent within a period of one week from the date of receipt of copy of this order and also directed to proceed with the proceedings and dispose the case as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

09.10.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The Subordinate Judge, Mettur, Salem District.



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T.V.THAMILSELVI, J.

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