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C.R.P.No.3739 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.3739 of 2019

1.John Rajenderan

2.John Athishayanathan

.. Petitioners

VS

Hemalatha

.. Respondent

Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 02.08.2019 made in I.A.No.21 of 2019 in unnumbered A.S. No. of 2019 on the file of the Principal District Judge, Villupuram.

For Petitioners : Mr.S.Mohana Sundara Rajan

For Respondent : Ms.M. Sudha
for Mr.C.Munusamy

ORDER

A suit was filed in O.S. No.56 of 2009. It is a suit for specific performance of a contract of sale. The suit was dismissed on 28.02.2018. Aggrieved over the judgment and decree, an appeal was presented before the lower appellate Court on 22.01.2019. There occasioned a delay of 263 days in preferring the appeal. The petition filed under Order 41 Rule 3(A) C.P.C. was dismissed on the



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ground that every day's delay had not been explained, against which the present revision has been filed.

2. Heard Mr.S.Mohana Sundararajan, learned counsel for petitioners and Ms.M.Sudha, learned counsel representing Mr.C.Munusamy, learned counsel for respondent and perused the records.

3. The reason for which the appeal could not be presented in time is because the learned counsel who appeared for the plaintiffs in the Trial Court refused to hand over the entire case bundle to him. This constrained the petitioners to lodge a complaint with the District Legal Services Authority of Villupuram. It is only on the complaint that was given, the papers were handed over to the appellants/petitioners.

4. For the purpose of filing an appeal under Order 41 C.P.C., one of the essential requirements is copy of the judgment. The copy of the judgment, not having been handed over, would have caused serious prejudice to the appellants/petitioners. The Court below could have taken a lenient approach considering the facts surrounding the case. I cannot expect the petitioners to do an impossible act of filing appeal when the papers are available with



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their lawyer. Therefore, the reason that has been given by the civil revision petitioners appears to me as sufficient cause. Therefore, I am inclined to condone the delay of 263 days in filing the first appeal. Consequently, I.A. No.21 of 2019 in unnumbered appeal of the year 2019 dated 02.08.2019 is set aside. The delay is condoned and the civil revision petition is allowed. No costs.

25.08.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi

To

The Principal District Judge,
Villupuram.



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V. LAKSHMINARAYANAN,J.

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