



C.R.P.No.3927 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.3927 of 2019

and

CMP No.25941 of 2019

1. Rajasekaran
2. R.Ponniyakotti Petitioners

Vs

1. Periyasamy
2. Elumalai Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the docket order dated 05.10.2015 made in I.A.No.301 of 2014 in O.S.No.129 of 2013 on the file of the Principal Subordinate Judge, Thiruvannamalai.

For Petitioners : Mr.K.Kathiresan
For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed as against the docket order dated 05.10.2015 made in I.A.No.301 of 2014 in O.S.No.129 of 2013 on the file of the Principal Subordinate Judge, Thiruvannamalai, thereby dismissing the petition to condone the delay for non-payment of cost of



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Rs.1,000/-.

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2. The petitioners are the defendants 2 and 3 in the suit filed by the first respondent for specific performance on the strength of the agreement for sale dated 19.05.2010. On receipt of the suit summons, the petitioners failed to appear before the Trial Court. Therefore, they were set ex-parte and on the strength of the ex-parte decree, the first respondent filed an Execution Petition in E.P.No.28 of 2014. On receipt of the notice from the Execution Court, the petitioners filed a petition to set aside the ex-parte decree with a delay of 204 days in filing a petition to set aside the ex-parte decree dated 06.09.2013. The said petition was allowed on payment of cost of Rs.1,000/-. However, it was not complied with and as such, the petition was dismissed.

3. The learned counsel for the petitioners would submit that the first petitioner is the father and the second petitioner is the son. The second petitioner is a physically challenged person, who was affected by Polio in his two legs. Therefore, he cannot stand up. The first petitioner is an aged



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person and also they were residing in a remote village. They were not properly informed by their counsel in order to pay the cost of Rs.1,000/-. Therefore, their counsel reported before the Trial Court 'No instruction'. Now they are ready and willing to pay the cost as imposed by the Court below, since they have got a good case to succeed in the main suit. They borrowed a loan from the first respondent and for security purpose, they registered a mortgage deed dated 14.11.2008. Accordingly, they are paying interest also. However, thereafter, again the petitioners borrowed more amount for which they fraudulently executed agreement for sale. The petitioners had absolutely no intention to sell the suit property.

4. In view of the above, the docket order dated 05.10.2015 passed in I.A.No.301 of 2014 in O.S.No.129 of 2013 on the file of the Principal Subordinate Judge, Thiruvannamalai, is hereby set aside. Accordingly, this Civil Revision Petition stands allowed on condition that the petitioners shall pay a sum of Rs.5,000/- as cost to the respondent on or before 20.03.2023, failing which the order passed by this Court shall stand automatically dismissed. On such payment, the Trial Court is directed to set



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aside the ex-parte decree and dispose of the suit within a period of six months thereafter.

27.02.2023

Index:Yes/No
Internet:Yes/No
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Note : Issue order copy on 03.03.2023

To
The Principal Subordinate Judge,
Thiruvannamalai.

G.K.ILANTHIRAIYAN, J.



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