



C.R.P.No.4019 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4019 of 2019

Karuppusamy ... Petitioner/Petitioner
/Plaintiff

Vs.

1.Natarajan
2.Annadurai
3.Nanjappa Gounder
4.Nanjappan
5.Selvaraj
6.Maniyan
7.Kumarasamy ... Respondents/Respondents
/Defendants

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 21.08.2019 in I.A.No.563 of 2018 in O.S.No.150 of 2013 on the file of the learned Subordinate Judge, Sathiyamangalam.



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For Petitioner : V.P.K.Gowtham
For Respondents : Mr.Subramanian
for Mr.Sathish Rajah
for R1 and R2
R3 to R6 - No appearance
Ms.Adhishree
for Mr.N.Manokaran for R7

ORDER

This revision arises against the dismissal of the application filed under Section 5 of the Limitation Act.

2.The suit is one for specific performance of agreement of sale dated 08.12.2011. The suit was listed for trial on 19.07.2016. On that day, as the plaintiff did not appear, the suit was dismissed for default. To restore the suit, an application was filed to condone the delay of 518 days. The reason given in the affidavit is that the petitioner/plaintiff was ill and was taking native treatment and therefore, he could not be present in Court.



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3.This was strongly opposed by the respondents herein who would state that the petitioner/plaintiff was aware about the dismissal of the case and he did not file any application in time.

4.Impressed with the arguments of the respondents, the application under Section 5 of the Limitation Act was dismissed. Against the said order, this Civil Revision Petition has been filed.

5.Heard Mr.V.P.K.Gowtham, learned counsel for the petitioner, Mr.Subramanian, learned counsel for the respondents 1 and 2 and Ms.Adhishree, learned counsel for the 7th respondent and perused the material on record.



6.I have to remember that the plaintiff does not gain anything, after paying the substantial court fees, to delay the proceedings. In this particular case, the plaintiff has paid the court fee of nearly Rs.65,000/- for obtaining a decree of Specific Performance and he had also diligently prosecuted the case. When the matter was posted for trial, he fell sick. Therefore, he could not be present in Court. In the cross examination of the 7th defendant, the 7th defendant admits that the petitioner was sick but knew about the dismissal within a month. The cross examination has elucidated the fact that he continued to be sick for a further period of six months. Sickness is a good reason and would be "sufficient cause" within the meaning of Section 5 of the Limitation Act.

7.Therefore, the order of the learned Trial Judge in I.A.No.563 of 2018 in O.S.No.150 of 2013 dated 21.08.2019 is set aside. The delay is condoned on condition that the petitioner



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pays to the contesting respondents herein, i.e., Ms.Adhishree and Mr.Subramaniam a sum of Rs.5,000/- each for the purpose of restoring the suit. The said payment shall be made within four weeks from the date of receipt of a copy of this order. In case the cost is not paid, this Civil Revision petition will stand dismissed. No costs.

30.08.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Subordinate Judge,
Sathiyamangalam.



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V. LAKSHMINARAYANAN, J.

mps

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