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C.R.P.No.4083 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4083 of 2019
and
C.M.P.No.26725 of 2019

1.M.Murugan
2.C.Munusamy

... Petitioners/Petitioners
/Petitioners/Defendants

Vs.

V.Senthil Kumar

... Respondent/Respondent
/Respondent/Plaintiff

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 14.11.2019 in I.A.No.1 of 2019 in I.A.No.49 of 2018 in O.S.No.40 of 2016 on the file of the learned II Additional District Judge, Vellore @ Ranipet.



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For Petitioners : Mr.Jeremiah Gregory John
For Respondent : Mr.V.M.Venkatramana

ORDER

This revision is preferred against the order and decretal order dated 14.11.2019 in I.A.No.1 of 2019 in I.A.No.49 of 2018 in O.S.No.40 of 2016 on the file of the learned II Additional District Judge, Vellore @ Ranipet.

2.O.S.No.40 of 2016 is a suit for specific performance of an Agreement of Sale. It resulted in *ex parte* decree on 30.06.2017. To set aside the same, I.A.No.49 of 2018 was filed together with a Written Statement on 28.07.2017. The said application was allowed on the condition that the petitioner shall pay a sum of Rs.2,000/- to the respondent on or before 17.08.2018. On the



said date, the cost was not paid and therefore, the application stood dismissed. Subsequently, execution petition was levied in E.P.No.13 of 2019 for the purpose of executing a Sale Deed. On receipt of the notice, the petitioner/plaintiff came forward with an application in I.A.No.1 of 2019 to extend time for payment of costs from 17.08.2018. The reason for which the petitioner could not make the payment was that he had suffered an accident and therefore, was not in a position to meet his counsel and pay the amount. This was stiffly opposed by the respondent who convinced the Court and got I.A.No.1 of 2019 dismissed. Against the said order, the present revision has been filed.

3.Heard the learned counsels appearing on either side and perused the material on record.

4.I feel that the learned Judge should have extended the



time granted by taking note of the fact that the petitioner had suffered head injuries and had been admitted in the hospital, since vital rights to immovable properties are involved and especially when a Written Statement has been filed pleading that it was a loan transaction and not an agreement of sale. Pending this proceedings, this Court by order dated 11.12.2019 had directed the petitioner to deposit six times the amount fixed by the Trial Court, namely, a sum of Rs.12,000/- to the credit of O.S.No.40 of 2016.

5.The learned counsel for the petitioners would submit that the said amount was deposited on 17.12.2019. I feel that interest of justice would be served, if in addition to the aforesaid amount, the petitioner is called upon to deposit the suit cost of Rs.1,22,455.50p. The said deposit shall be made within eight weeks from the date of receipt of a copy of this order. On such deposit, I.A.No.1 of 2019 will be allowed and the *ex parte* decree



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dated 30.06.2017 will be set aside. The Court below is requested to take up the suit for trial and dispose of the said suit within six months from the date of such restoration. The amount deposited on 19.12.2019 can be withdrawn by the respondent/plaintiff for which Mr.Jeremiah Gregory John, learned counsel for the petitioners, has no objection. No costs. Consequently, connected Miscellaneous Petition is closed.

30.08.2023

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

Note to Office:

Issue order copy on 01.11.2023

To

The II Additional District Judge,
Vellore @ Ranipet.



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V. LAKSHMINARAYANAN, J.

mps

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and
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