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C.R.P.(NPD)No.423 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.423 of 2019

Ramalingam

.. Petitioner

VS

1.M/s.I.L.&F.S. Tamil Nadu Power Company Ltd.,
having its office at B-Block, Wavin Presidim,
4th Floor, No.103, Nelson Manickam Road,
Aminjikarai, Chennai-600 029
Represented by its Manager (Legal),
P.Sekar, Son of Ponnambalam,
having his office in the same premises

2.Balasubramaniyan
3.Kamalakannan
4.Vijaya
5.Dhanalakshmi
6.Sadhasivam
7.Aiswarya

.. Respondents

Petition filed under Section 115 of Civil Procedure Code against the Order and decretal order dated 31.10.2018 passed in C.M.A.No.14/2015 on the file of the Subordinate Judge, Chidambaram in I.A.No.135/2015 in O.S.No.8/2014 on the file of the District Munsif cum Judicial Magistrate, Portonovo.



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For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.A.R.Pradeep (for R1)
for Mr.A.K.Raghavalu
No Appearance (for R2, R3 & R6)
R4 - Died
R5 & R7 - Not Ready Notice

ORDER

An application was filed to set aside the exparte decree dated 01.04.2015. The petitioner claims the property on the strength of an agreement of sale which merged into a decree for specific performance in O.S.No.4 of 2009. Subsequent to the said proceeding, a sale deed had been executed by the defendant in O.S.No.4 of 2009 in favour of the first petitioner/plaintiff. The case was listed for hearing on 07.03.2015. Since the petitioner was not present, an exparte order was passed. The matter stood adjourned to 26.03.2015. On that date, since the petitioner was not present, the Court proceeded further. As pointed out above, an exparte decree was passed on 01.04.2015.

2.The petitioner filed an application under Order 9 Rule 13 of CPC stating that he was suffering from jaundice and therefore was not in a position to attend the Court.

3.The learned District Munsif cum Judicial Magistrate, Portonovo as well as learned Subordinate Judge, Chidambaram had refused to set



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aside the exparte decree on the ground that the petitioner ought to have filed the application immediately on being set exparte namely, 26.03.2015.

4. Being an issue relating to title to a property, the Courts below could have taken a liberal approach and imposed heavy costs on the petitioner to give him an opportunity to contest the same. Therefore, I pass the following order:

(i) CRP(NPD)No.423 of 2019 is allowed.

(ii) The order passed in CMA.No.14 of 2015 dated 31.10.2018 in confirming the fair and decreetal order in I.A.No.135 of 2015 in O.S.No.8 of 2014 dated 08.10.2015 are set aside on the condition that the petitioner shall pay a sum of Rs.30,000/- to the plaintiff in O.S.No.8 of 2014 within a period of eight (8) weeks from today.

(iii) On proof of receipt of such payment, O.S.No.8 of 2014 is restored to the file and shall be disposed of in accordance with law within a period of nine (9) months from the time the suit is restored on to the file. No costs.

17.07.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs



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To

- 1.The Subordinate Judge,
Chidambaram.
- 2.The District Munsif cum Judicial Magistrate,
Portonovo.



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V. LAKSHMINARAYANAN,J.

VS

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