



C.R.P.(MD).No.1921 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1921 of 2019

Pitchumani Nadar

... Revision Petitioner/Petitioner/
Plaintiff

-vs-

1. K.Maria Jesu
2. Siluvaipakkiam

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.12.2018 made in I.A.No.708 of 2018 in O.S.No.136 of 2013 on the file of the Subordinate Court, Tuticorin.

For Petitioner : Mr.S.Kadarkarai

For Respondents : No appearance

ORDER

The instant Civil Revision Petition has been filed by the petitioner against the order of the Court below in I.A.No.708 of 2018, in which, the trial Court rejected to condone the delay in payment of remaining sale



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consideration. Aggrieved with the said order, the petitioner is before this Court.

2. The learned counsel for the petitioner would submit that under Section 28 of the Specific Relief Act, the trial Court has got ample power to extend the time and would further submit that the passing of decree for specific performance is for preliminary decree and until the decree is executed, the trial Court has got power and control over the decree. Therefore, the rejection of the Court below from condonation of delay is erroneous and prayed to allow this Civil Revision Petition.

3. Despite the names of the respondents are printed in the cause list, no one appeared on behalf of them.

4. This Court has given it's anxious consideration to the submissions of the learned counsel for the petitioner.

5. While perusing the decree, it is seen that the decree was passed on 29.01.2014. The very decree for specific performance was based upon the



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sale agreement dated 08.12.2011. When the Court below has passed an *exparte* decree, it has granted two months time to the plaintiff to pay the remaining sale consideration and to get the sale deed executed. However, there was enormous delay of four years and has filed an application for condonation of such delay on the ground that the counsel for the petitioner died. However, there are no records submitted as to the date of the death of the learned counsel appearing for the petitioner before the Court below.

6. Therefore, this Court could not find any infirmity in the order passed by the Court below in rejecting the application filed by the petitioner. At this juncture, the learned counsel for the petitioner would draw the attention of this Court in respect of judgment of the Hon'ble Supreme Court reported in **2023 Live Law (SC) 151 (P.Shyamala vs. Gundlur Masthan)** through which, the learned counsel for the petitioner would submit that when the Court is agreeing with the trial Court order, would request this Court to consider for refund of advance amount. The relevant portion of the judgment of the Hon'ble Supreme Court reported in **2023 Live Law (SC) 151 (P.Shyamala vs. Gundlur Masthan)** in paragraph No.9 is extracted hereunder:

“9. In view of the above and for the reasons stated



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above, both these appeals succeed. The impugned common judgment and order dated 17.01.2022 passed by the High Court dismissing the revision applications and the common order passed by the trial Court dated 29.06.2019 allowing I.A. No. 732/2016 filed by the plaintiff seeking extension of time with a huge delay of 853 days and dismissing I.A. No. 914/2017 filed by the defendant to rescind the agreement to sell dated 09.05.2012 are hereby quashed and set aside. I.A. No. 732/2016 filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time with a huge delay of 853 days to deposit the balance sale consideration stands dismissed. I.A. No. 914/2017 filed by the appellant – defendant under Section 28 of the Specific Relief Act to rescind the agreement to sell dated 09.05.2012 on non-payment of/deposit of the balance sale consideration by the plaintiff, which the plaintiff was required to deposit/pay within a period of two weeks from the date of ex-parte judgment and decree dated 12.10.2013, stands allowed. Agreement to sell dated 09.05.2012 stands rescinded in exercise of powers under Section 28 of the Specific Relief Act. However, the appellant herein is directed to refund the amount of Rs. 8,00,000/- to the plaintiff with 12% interest from 09.05.2012 till the actual payment, within a period of six weeks from today, failing which it shall carry interest @ 18% per annum.

7. Therefore, in view of the above ratio, this Court finds force in the



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submission made by the learned counsel for the petitioner. Therefore, while dismissing the Civil Revision Petition, this Court deems it appropriate to give a direction to the defendant to refund the advance amount, which is mentioned in the plaint, viz., Rs.60,000/- (Rupees Sixty Thousand only) with interest at the rate of 12% from the date of the agreement i.e., on 08.12.2011.

8. In the result, this Civil Revision Petition stands dismissed as indicated above. There shall be no order as to costs.

27.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Court,
Tuticorin.



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C.KUMARAPPAN,J.

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