



C.R.P(MD)No.2318 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2318 of 2022

and

C.M.P(MD)No.11182 of 2022

V.Joseph Velusamy

... Petitioner/Respondent/
Plaintiff

Vs.

K.Palanisamy

... Respondent/Petitioner/
Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair order passed in I.A.No.197 of 2021 in O.S.No.118 of 2016, dated 23.08.2022 on the file of the Subordinate Judge, Veda sandur.

For Petitioner : Mr.B.Azhagesh

For Respondent : No Appearance

ORDER

There is no representation on behalf of the respondent though the name of the respondent is printed in the cause list.



C.R.P(MD)No.2318 of 2022

2. The petitioner is the plaintiff before the Sub Court, Veda sandur in O.S.No.118 of 2016. In the said suit, the respondent/defendant remained *ex parte* and therefore, an *ex parte* order came to be passed on 20.12.2018. Pursuant to which, the petitioner filed E.P.No.47 of 2019 and E.A.No.8 of 2021.

3. It is the specific case of the petitioner that even in the execution proceedings, the respondent remained *ex parte* and therefore, the sale deed was executed and delivery was ordered and when the delivery was taken, the respondent created law and order situation and thereafter, filed an application in I.A.No.197 of 2021 to set aside the *ex parte* decree, dated 20.12.2018. It is submitted that though the trial Court has not found sufficient reasons for condoning the delay but nevertheless condoned the delay by stating that the respondent deserves one opportunity.

4. The learned counsel for the petitioner further submits that even the conditional order has not been complied by the respondent. That apart, the petitioner has been spent almost Rs.66,000/- for registration of the sale deed, pursuant to the *ex parte* decree, dated 20.12.2018.



C.R.P(MD)No.2318 of 2022

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5. The suit has been filed by the petitioner for specific performance of an agreement, dated 28.01.2015. According to the petitioner, sale consideration for the property was Rs.3,20,000/- out of which Rs.3,00,000/- was paid and the balance Rs.20,000/- was to be paid over a period of 20 months. The records indicates that the contention of the respondent that the value of the property is more than Rs.50,00,000/-. No doubt, the respondent was negligent in not entering appearance before the trial Court before the *ex parte* was passed on 20.12.2018. The respondent has also allowed the petitioner to make further investment on the property by paying the requisite stamp duty for registering the sale deed apart from engaging the counsel for taking delivery of the possession of the property in terms of the *ex parte* decree passed by the said Court on 20.12.2018. The facts on record also indicate that no written statement appears to have filed before the trial Court.

6. However, considering the fact that the value of the property may be more than Rs.50,00,000/-, I am inclined to interfere with the order by directing the respondent to pay a sum of Rs.1,25,000/- to the petitioner within a period of 30 days from the date of receipt of copy of this order



C.R.P(MD)No.2318 of 2022

as cost for the expenses incurred by the petitioner towards stamp duty and for engaging the counsel and for the trouble taken by the petitioner for taking steps to execute the *ex parte* decree by moving appropriate proceedings under Order 21 of C.P.C. Subject to the respondent paying the aforesaid amount of Rs.1,25,000/- to the petitioner within the aforesaid period, the trial Court shall accept the written statement of the respondent and frame issues and proceed with the trial. On part of the respondent's failure to comply with the directions of this Court shall result in automatic cancellation of the order and thus, resulting in reversal of the impugned order, dated 23.08.2022 in I.A.No.197 of 2021 in O.S.No.118 of 2006.

7. The present Civil Revision Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.R.P(MD)No.2318 of 2022

To

1.The Subordinate Judge,
Vedasandur.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.2318 of 2022

C.SARAVANAN,J.

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C.R.P(MD)No.2318 of 2022

05.04.2023