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C.R.P. (NPD)No.352 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD)No.352 of 2022
and CMP.No.1843 of 2022

1.M.Vanaja
2.G.Murali

... Petitioners

Vs.

1.Suresh Kumar
2.Mohammed Sirajuddin
3.The Manager,
Allahabad Bank,
CRBB, T.Nagar Branch,
Chennai 600 017.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order made in I.A.No.1/2019 in O.S.No.7009 of 2013 dated 01.03.2021 on the file of the VI Additional City Civil Judge, Chennai.

For Petitioner : Mr.G.Veerapathiran

For RR3 : Mr.R.Ramesh

Page NO:1



C.R.P. (NPD)No.352 of 2022

ORDER

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This Civil Revision Petition has been filed against the order made in I.A.No.1/2019 in O.S.No.7009 of 2013 dated 01.03.2021, on the file of the VI Additional City Civil Judge, Chennai.

2. Facts of the case is that the petitioners are defendants 2 and 3 and 1st respondent is the plaintiff. The 1st respondent has filed a Suit for specific performance to complete the sale as per the Sale Agreement dated 23.11.2009. The said Suit was decreed exparte on 22.07.2015. The Court below directed the 1st respondent to deposit the balance sale consideration to the Court. An application was filed for acceptance of sale draft before the Court below, for which the petitioners received summons from the Court. Immediately, the petitioners have approached their advocate, who advised them to file an application to set aside the exparte order. Since, the application was filed with a delay of 1473 days, it was rejected by the Court below. Challenging the same, the present Civil Revision Petition is filed by the petitioners.

Page NO:2



C.R.P. (NPD)No.352 of 2022

3. The learned counsel appearing for the petitioners submitted that the delay of 1473 days in filing application to set aside the exparte order, is neither wilful nor wanton. It is the negligence on the part of the advocate, who failed to get along with the case. Due to which an exparte order was passed.

4. The petitioners contended that they have not been informed by the advocate about the exparte order and the application filed with delay to set aside the exparte order was neither wilful nor wanton, therefore, the petitioners cannot be made to suffer for the error committed by the advocate.

5. Heard the submissions of the learned counsel for the petitioners and the learned counsel appearing for the 3rd respondent Bank and also perused the materials available on record.

6. A perusal of the order impugned in this Revision Petition would go to show that the learned Judge dismissed the petition filed u/s.5 of Limitation Act for condoning the delay of 1473 days in filing the set aside



C.R.P. (NPD)No.352 of 2022

exparte application by order dated 01.03.2021 in I.A.No.1/2019 in O.S.No.7009/2012. The learned Judge pointed out that the delay is 1000 and odd days for filing application to set aside the exparte order, which is almost more than three years; it is for the petitioners to be vigilant and contact the advocate to know the status of the case.

7. In my considered view, though the petitioners claimed that the delay was only due to the act of the Advocate not informing about the exparte order, it is equally the responsibility of the petitioner to enquire about the status of the matter. The delay is very enormous and therefore, the learned Judge has dismissed the condone delay petition which does not warrant any interference of this Court.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

27.02.2024

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To

1.The Principal Judge Family Court, Chennai.

Page NO:4



WEB COPY



C.R.P. (NPD)No.352 of 2022

J.NISHA BANU,J.

Page NO:5



WEB COPY



C.R.P. (NPD) No.352 of 2022

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C.R.P.(NPD) No.352 of 2022

27.02.2024

Page NO:6