



C.R.P.No.1081 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1081 of 2024 and
C.M.P.No.5617 of 2024

Mr.J.Mohan

... Petitioner

Vs.

Mr.D.Sugumar

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the order dated 21.02.2024 passed in I.A.No.4 of 2023 in O.S.No.1520 of 2019 by the learned IV Additional City Civil Court, Chennai.

For Petitioner

:Mr.K.Chandrasekaran

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the respondent seeking to condone the delay of 227 days in filing petition to set aside the *exparte* decree passed against him on 22.02.2023.



2. The petitioner herein filed a suit for specific performance of sale agreement dated 06.10.2010 and the said suit was decreed *ex parte* on 22.02.2023. The respondent herein, who was arrayed as sole defendant in the suit, filed an application to set aside the *ex parte* decree on 06.11.2023. In the affidavit filed in support of the condone delay petition, it was stated by the respondent that original owner of the agreement mentioned property namely Ganesan filed a suit for recovery of possession against the tenant and the same was dismissed and challenging the same, he preferred first appeal before this Court. It was further averred that pending first appeal, the said Ganesan died. He executed a Will in favour of respondent bequeathing the agreement mentioned property in his favour. Based on the Will, the respondent was brought on record and the appeal was allowed. Challenging the same, the tenant of the property filed special leave petition before the Hon'ble Apex Court and the petitioner herein also filed an application for impleading himself as a party in the said special leave petition by mentioning the *ex parte* decree. It was stated by the respondent that he was under an impression that the present suit would be taken up for consideration only after the disposal of the special leave petition and from the averments found in the impleading petition



filed by the petitioner, he acquired knowledge about the *ex parte* decree and hence, the present application has been filed to set aside the *ex parte* decree along with condone delay petition.

3. The Trial Court, having satisfied with the reasons assigned by the respondent in the affidavit, had taken a liberal approach and condoned the delay. The Trial Court also had taken into consideration that petitioner deposited the balance amount as per the *ex parte* decree with a delay and therefore, an opportunity shall be given to the petitioner to put forth his case on merits.

4. It is settled law when there is a conflict between the procedural law and the substantial rights of the parties, the latter will prevail over the former. The present suit is for specific performance of agreement. Taking into consideration the totality of the circumstances, the Trial Court had exercised discretion in favour of the respondent and condoned the delay by imposing cost. I do not find anything to interfere with the order passed by the Trial Court and accordingly, the Civil Revision Petition stands dismissed.



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5. Having regard to the fact that the suit for specific performance is of the year 2019, this Court is inclined to issue a direction to the Trial Court to dispose of the suit as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

25.03.2024

Index : Yes / No
Internet : Yes / No
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To

The IV Additional City Civil Court, Chennai.



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S.SOUNTHAR, J.

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