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Application Nos. 2502 and 2503 of 2024
in C.S. No. D143620 of 2018

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C.V.KARTHIKEYAN, J.

The suit had been filed by the first to fifth plaintiffs seeking recovery of unpaid sale consideration. They had sold the property to the defendant. But it is alleged that a sum of Rs. 40 lakhs, which was part of the sale consideration, was not paid by the defendant. At the time of executing the sale deed, the first to fifth plaintiffs had appointed the fifth plaintiff as the power of attorney and that power of attorney contained clauses not only with respect to power to sell the property but also to initiate any litigation arising consequent to such sale. The property was sold in accordance with the power of attorney. The plaint had been instituted in accordance with the power given to institute any suit consequent to such sale. The original of that power of attorney had been handed over to the defendant on execution of the sale deed. But the plaintiff could never have imagined that a litigation would follow and never also imagine that the defendant would not pay the balance sale



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consideration of Rs. 40 lakhs. He had issued cheques, which were subsequently dishonoured. It was under those circumstances the plaintiff had instituted the suit seeking recovery of the unpaid sale consideration of Rs. 40 lakhs, which together with interest, had accrued to a sum of Rs. 1,25,80,000/- at the time of presentation of the plaint. The plaint was originally presented on 14.12.2018. Thereafter, since the original power of attorney was not there, the Registry had returned the plaint for compliances.

2. A perusal of the original records would show that the plaint was, in the first instance returned on 28.12.2018 and then re-presented on 09.01.2019 and again returned and again re-presented and again returned and represented and this went on again and on for atleast 12 occasions. Somewhere in between, more particularly on 21.12.2020 when the plaint was re-presented, the learned counsel had stated that the plaint could be put up before the Court on the issue of maintainability. But the plaint had been circulating between the office of the learned counsel for



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the plaintiffs and the Registry, with the Registry returning it and the learned counsel re-presenting it. But till date the original power of attorney had not been produced. The total number of days from the date of the first return has now accrued to more than 5 ½ years and claiming that even if some leverage is given for COVID pandemic period there is been substantial delay. The learned Master had rejected the plaint and had thought it was not a fit matter for condonation of delay in re-presentation.

3. The learned counsel for the plaintiff however pointed out that it was not a case of one return and re-presentation after 5 1/2 years, but successive returns and successive re-presentations. In the middle of this, in one of the representations, it had not been re-presented before the Assistant Registrar (Original Side)-I and therefore, there was also a defective re-presentation.

4. At any date, the plaintiff cannot be non-suited on these



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grounds. The grounds are technical in nature. The Court would have to focus on whether the plaint should be rejected on the ground that the relief sought itself cannot be granted or that the plaint itself suffers from some formalities.

4. The fact is that there has been several returns and several re-presentations. It is not one stretch of delay but several re-presentations made. While calculating the delay, the date of the first return and the date of the final re-presentation alone had been taken into consideration which in my opinion is not correct.

5. The issue relating to the original power of attorney will have to be dealt with separately, but the order of the learned Master is concerned, who had opined that the affidavit is bereft of any reason will necessarily have to be interfered with by this Court. The order of the learned Master is set aside and the delay in re-presentation is condoned.



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6. Application Nos. 2088 of 2024 and 2089 of 2024 are now allowed and the order of the learned Master is set aside. Accordingly, these applications are allowed.

7. Registry to examine the plaint in C.S. No. D143620 of 2018 afresh.

10.06.2024

Maya



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