



C.R.P.No.3727 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13..09..2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3727 of 2024

D.Gajendra Babu

..... Petitioner

-Versus-

G.Sundarraaj

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the return docket order dated 05.06.2024 passed by the learned Subordinate Judge, Thiruvallur, in unnumbered O.S.No. - of 2024 [Filing No.OS/477/2023 (CNR No.TNTR1C0004422023)] and to direct the learned Subordinate Judge, Thiruvallur, to number the plaint pending on his file.

For Petitioner : Ms.V.Dhivia Bharathi



C.R.P.No.3727 of 2024

ORDER

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This civil revision petition arises against an order of the learned Subordinate Judge, Tiruvallur, dated 05.06.2024 returning the plaint in unnumbered Original Suit of 2024 in filing No.OS/477/2023 (CNR No.TNTR1C0004422023).

2. The plaintiff is the civil revision petitioner. He presented a suit for specific performance of agreement of sale dated 23.06.2017 and for permanent injunction restraining the defendant from selling the property. It is a registered document on the file of the Sub Registrar, Tiruvallur. The plaint also seeks for the alternative relief of refund of advance amount.

3. It is the case of the plaintiff that the sole defendant had entered into an agreement of sale with him on 23.06.2017 and the same was registered. The total sale consideration was fixed at Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) and the agreement recites that a sum of Rs.3,00,000/- (Rupees Three Lakhs only) had been received on the date of agreement granting a period of three years to the plaintiff to pay the balance sale consideration till 23.06.2020.



C.R.P.No.3727 of 2024

4. The plaintiff would plead that he had presented the suit on 20.06.2023.

The plaint was returned stating that the suit is not maintainable as it is barred by time. Hence, this revision to direct the learned Subordinate Judge, Tiruvallur, to number the plaint and issue summons.

5. Heard Ms.Dhivia Bharathi for the civil revision petitioner.

6. The issue of limitation is a mixed question of law and fact. At the time of numbering of the plaint, the court should not don on itself, the role of the defendant and take pleas which are rightly available only to an opposing party. If the plaint gives an explanation for the delay, the court should accept such explanation and number the plaint. This is the view taken by the Hon'ble Mr. Justice N.Seshasayee in the case of **Selvaraj Vs Koodankulam Nuclear Power Plant India Limited, Rep. through its Project Director [(2021) 5 MLJ 467]**.

7. A perusal of paragraph No.16 of the plaint shows that the time for presentation of the suit expired on 23.06.2020. By virtue of the orders of the Supreme Court in **In RE Suo Motu Writ Petition (C).No. 3 of 2020** dated **22.03.2020** reported in **[(2020) 19 SCC 10]**, the period of limitation was suspended by the Supreme Court on account of the pandemic caused by COVID19 virus.



C.R.P.No.3727 of 2024

The Supreme Court had made it clear that in case the limitation were to expire during the pendency of the writ petition, the same shall not be taken into consideration. This explanation has been given in paragraph 16 of the plaint. When such is the case, a return by the court Registry viz., through the ministerial officer of the court, cannot but be erroneous. The same is set aside. The learned Subordinate Judge shall number the plaint. In case, the defendant takes a plea at the time of trial, the court shall decide upon such issue. The civil revision petitioner shall represent the plaint before the court of the Subordinate Judge, Tiruvallur, within a period of two weeks from the date of receipt of the original plaint from the registry. The learned Subordinate Judge, Tiruvallur, shall number the plaint within thirty days from the date of representation of the same by the civil revision petitioner/plaintiff.

This civil revision petition is allowed accordingly with the above directions. No costs.

Index : yes / no
Neutral Citation : yes / no
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13..09..2024

Note to the Registry: The original plain that has been filed along with the revision shall be returned to the civil revision petitioner for representation in accordance with the order of this court.



C.R.P.No.3727 of 2024

To

1.The Subordinate Judge, Tiruvallur, Tiruvallur District.

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C.R.P.No.3727 of 2024

V.LAKSHMINARAYANAN.J.,

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C.R.P.No.3727 of 2024

13..09..2024