



WEB COPY



C.R.P.No.1449 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1449 of 2020 and

C.M.P.No.8359 of 2020

A.Kandhasamy

... Petitioner

Vs.

- 1.Muthammal
- 2.Ramalingam
- 3.Kavitha
- 4.Kalimuthu
- 5.Kaviraj
- 6.Maheswari
7. Shanthi
- 8.Indhirani
- 9.Indhuja
- 10.Ramya
- 11.Rajamanickam @ Singari
- 12.Karuppusamy
- 13.Selvam

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order dated 22.07.2019 in I.A.No.454 of 2018 in O.S.No.328 of 2014 on the file of the learned Sub-ordinate Judge of Pollachi.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.T.M.Naveen



C.R.P.No.1449 of 2014

ORDER

WEB COPY

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner/decreed holder seeking to extend the time for deposit of the balance sale consideration as per the decree for specific performance passed in O.S.No.328 of 2014.

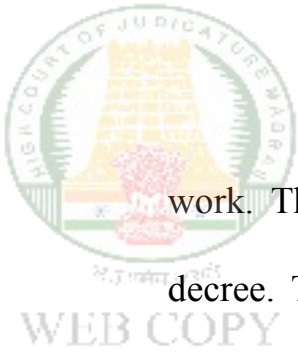
2. The petitioner herein filed a suit for specific performance of agreement dated 23.12.2009. The petitioner entered into agreement with one Ponnuthayi and Muthammal and their children for purchase of five cents of land in Natham Survey No.23 in Oorkattu Village for total agreed sale consideration of Rs.3,00,000/-. As per the terms of agreement, he paid an advance of Rs.1,00,000/- Subsequently, on 21.09.2010 the petitioner paid further sum of Rs.90,000/- and got sale deed in respect of undivided $\frac{1}{2}$ share of the agreement mentioned property from Ponnuthayi and her children. The present suit has been filed for specific performance against respondents in respect of other undivided $\frac{1}{2}$ share against Muthammal and her children. The suit was decreed *ex parte* on 20.11.2015 and the petitioner was directed to



deposit balance sale consideration within a period of one month. However, the petitioner failed to deposit the balance sale consideration of Rs.1,10,000/- within the time stipulated. Thereafter, the petitioner filed the instant application seeking extension of time. In the affidavit filed in support of the application, it was averred by the petitioner that due to his work, he was forced to stay in Kerala for months together and hence, he could not meet his counsel and pay balance sale consideration as per the decree. It was also averred by petitioner that his failure to pay balance sale consideration within the time stipulated is not willful and sought for extension of time.

3. The Court below dismissed the application filed by the petitioner on the ground that the petitioner failed to give any convincing reasons for granting extension of time. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the fact of passing of *ex parte* decree in favour of petitioner did not come to his knowledge immediately as he was away in Kerala in connection with his



work. Therefore, he could not deposit the amount as per the terms of the decree. The learned counsel also on instructions, submitted that as per the terms of decree, the balance sale consideration to be deposited by the petitioner is Rs.1,10,000/- (Rupees One lakh ten thousand only). But taking into consideration the passing of time, the petitioner is willing to deposit Rs.6,00,000/- (Rupees six lakhs only) and hence, the Court can take a liberal approach and extend the time. In support of his contentions, the learned counsel for the petitioner relied on the judgment in the case of ***Periyakkal and Others Vs Dakshyani*** reported in ***1983 SCR(2) 467***.

5. The learned counsel for the respondents vehemently opposed the application on the ground that petitioner has not made out any case for extending the time. The learned counsel submitted that in a suit for specific performance, the plaintiff has to prove his readiness and willingness throughout and his conduct subsequent to the filing of the suit can also be taken into consideration while exercising discretion. In support of his contentions, the learned counsel for the respondents relied on the judgment of the Hon'ble Apex Court in the case of ***V.S.Palanichamy Chettiar Firm Vs***



***C.Alagappan and Another* reported in (1999) 4 SCC 702 and *P.Shyamala Vs Gundlur Masthan* reported in 2023 SCC OnLine SC 184.**

6. It is settled law that in a suit for specific performance, the plaintiff has to prove his readiness and willingness from the inception to the date of filing of the suit. A person who is not ready to perform his part of agreement, is not entitled to exercise of discretion in his favour. In this case, the petitioner succeeded in getting a decree for specific performance. As per the decree, he was directed to deposit balance sale consideration within a period of one month from the date of decree. It is stated by the petitioner that at the relevant point of time, he was in Kerala and hence, he could not contact his counsel and acquire knowledge about the decree passed in his favour. The petitioner has not given any other reason explaining the huge delay of 808 days in filing application seeking extension of time. The decree in favour of petitioner was passed on 20.11.2015. The time for deposit expired on 19.12.2016. The present application has been filed on 08.03.2018 nearly after two years. In support of the petition, he had filed an affidavit stating that as he was forced to stay in Kerala in connection with his work, he could not meet his counsel and



take steps to pay balance consideration. Such a vague explanation on the part of the petitioner cannot be a ground to extend the time for making a deposit as per the decree. It is pertinent to note even at the time of filing the petition seeking extension of time, the petitioner has not offered to deposit the amount. Even though the learned counsel for the petitioner submitted that his client is ready to deposit Rs.6,00,000/-, the counsel for the respondent submitted the market value of the property as on today is Rs.15,00,000/- and hence, his client is not willing to accept the same. In these circumstances, I do not think that the vague reason given by the petitioner is a sufficient ground to extend the time by condoning the huge delay of nearly two years in filing such application for extension of time. Hence, I do not find any reason to interfere with the order passed by the Court below. The petitioner herein in his plaint not even prayed for return of advance amount. Hence, as per law laid down by Hon'ble Apex Court in ***Desh Raj Vs Rohtash Singh reported in 2023 (1) CTC 348***, I am not inclined to order refund of advance. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

05.02.2024



C.R.P.No.1449 of 2020

Index : Yes / No
Internet : Yes / No
nr

To

The learned Sub-ordinate Judge of Pollachi.



WEB COPY



C.R.P.No.1449 of 2020

S.SOUNTHAR, J.

nr

C.R.P.No.1449 of 2020 and
C.M.P.No.8359 of 2020

05.02.2024