



C.R.P.(NPD) (MD).No.856 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.856 of 2018

Manickam

... Petitioner/Plaintiff

-vs-

Sumathi

... Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 26.04.2016 made in I.A.No.162 of 2016 in O.S.No.1000 of 2014, on the file of the I Additional Sub Court, Madurai (Melur Camp) and to direct the I Additional Sub Court, Madurai (Melur Camp) to issue the challan to deposit the balance sale amount as per the decree in O.S.No.1000 of 2014.

For Petitioner : Mr.S.Rajasekar
For Respondent : No appearance

ORDER

The present Civil Revision Petition has been filed by the decree holder in a specific performance suit, challenging the dismissal of an application seeking extension of time for depositing the sale consideration.



C.R.P.(NPD) (MD).No.856 of 2018

WEB COPY

2. The revision petitioner herein has filed a suit in O.S.No.1000 of 2014, before the I Additional Sub Court, Madurai (Melur Camp), for the relief of specific performance. The suit was decreed on 28.08.2015, granting two months time from the date of decree to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only), which is the balance sale consideration.

3. A Memo was filed by the plaintiff's counsel on 09.12.2015 to the effect that the Challan was not issued by the ministerial staff and he had prayed before the Court to issue a direction for issuance of a Challan on the basis of the lodgement schedule. The Memo was rejected by the Court, on the ground that a Challan cannot be issued on the basis of the lodgement schedule filed along with suit. However, liberty was granted to the decree holder to seek appropriate remedy.

4. Pursuant to the orders passed in the Memo, the decree holder had filed I.A.No.162 of 2016, under Section 148 C.P.C r/w Section 28 of Specific Relief Act, seeking extension of time for depositing the balance sale consideration of Rs.50,000/- (Rupees Fifty Thousand only). This application



C.R.P.(NPD) (MD).No.856 of 2018

was dismissed by the trial Court on various grounds including the ground that the decree holder has not filed an application and it is signed only by the counsel.

5. Though the respondent in the revision petition has been served and name was printed in the cause list, she has not chosen to appear either in person or through her counsel.

6. Considering the fact that the application has been dismissed on technical ground, the order passed in I.A.No.162 of 2016, dated 26.04.2016 is hereby set aside. The matter is remitted back to the file of I Additional Sub Court, Madurai (Melur Camp). The decree holder is directed to file an affidavit in support of his case in I.A.No.162 of 2016 on the basis of the above said affidavit. The trial Court is directed to consider the application filed under Section 148 of C.P.C, r/w Section 28 of Specific Relief Act, on merits, and in accordance with law, after giving due opportunity to the parties, without being influenced by any one of the observations made in the order dated 26.04.2016.



C.R.P.(NPD) (MD).No.856 of 2018

WEB COPY

7. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs.

24.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The I Additional Sub Court,
Madurai (Melur Camp)



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C.R.P.(NPD) (MD).No.856 of 2018

R.VIJAYAKUMAR,J.

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C.R.P.(NPD)(MD)No.856 of 2018

24.07.2024