

Sushila Narahari and Others

Vs

Nandakumar and Another

Civil Appeal No. 9480 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

08.07.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. This appeal by special leave arises against the order of the learned Single Judge of the High Court made on 14-2-1994 in CRP No. 306 of 1994. The suit for specific performance of agreement dated 29-1-1986 for the sale of 4840 sq.ft. of land in Madras city, laid by the respondent, was decreed ex parte. The appellants had filed an application to set aside the ex parte decree which was dismissed by the trial court and confirmed by the High Court in revision. Thus, this appeal by special leave.
4. A reading of the facts leaves us with no doubt that the advocate has derelicted his duty to inform the client by registered post if there was any non-cooperation on behalf of the appellants. Consequently, when the suit had come up for trial, he had withdrawn his vakalatnama without notice to the appellants. The trial court set the appellants ex parte and decreed the suit for specific performance. The application for condonation of delay of 40 days was filed. The Court refused to condone the delay. In view of the above, we find that she is well justified in filing the application with the delay. The delay is accordingly condoned. The ex parte decree is set aside. The trial court is directed to give opportunity to the appellants to cross-examine the witness examined by the respondents of the suit and also adduce evidence on her behalf. The trial court is further directed to dispose of the matter as expeditiously as possible, preferably within one year from the date of receipt of the copy of the order.
5. The appeal is allowed. No costs.