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SUSHILA NARAHARI AND ORS.

v.

NANDA KUMAR AND ANR.

JULY 8, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908: Order 9 Rules 13 and 14.*

C

*Ex-parte decree—Setting aside of—Respondent's suit for specific performance—Ex-parte decree—Application for setting aside of by appellant—Delay in filing—Delay due to advocate's dereliction in duty in withdrawing Vakalatnama without notice to party—Held in such circumstances delay in filing the application was justified—Delay condoned and ex parte decree set aside.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9480 of 1996.

From the Judgment and Order dated 14.2.94 of the Madras High Court in C.R.P. No. 306 of 1994.

E

M.A. Krishna Moorthy for the Appellants.

Dr. A. Francis Julian and A. Mariarputham for the Respondents.

The following Order of the Court was delivered :

F

Leave granted.

We have heard learned counsel on both sides.

G

This appeal by special leave arises against the order of the learned single Judge of the High Court made on February 14, 1994 in CRP No. 306/94. The suit for specific performance of agreement dated January 29, 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.

H

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 Consequently, when the suit had come up for trial, he has withdrawn his vakalatnama without notice to the appellants.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 respondent 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. The appeal is allowed. No costs.

T.N.A.

Appeal allowed.