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A.No.5635 of 2024

in

A.No.720 of 2023

in

E.P No.119 of 2019

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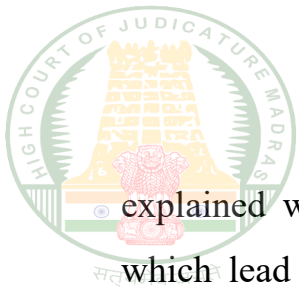
09.07.2026

ORDER

1. This application is filed by the applicant/deGREE holder to set aside the order of dismissal dated 17.11.2023 in A.No.720 of 2023 and restore the said application.

2. Heard both side counsels. The learned counsel for the decree holder submitted that he filed E.P No.119 of 2019 for executing the decree dated 08.12.2008 in OSA No.340 of 2008 which was allowed by this court and accordingly a registered sale deed was executed by the Hon'ble High Court for and on behalf of Judgment debtor on 22.08.2002 vide Document No.4575 of 2022 SRO, Kodambakkam. Subsequent to which an applicant has filed an application in A.No.720 of 2023 to take possession of the suit schedule property which was dismissed for default by this court on 17.11.2023. The reason for non-appearance on 14.07.2023, 25.08.2023, 13.10.2023 and 17.11.2023 is that the applicant's wife got demised on 01.04.2023 due to which the applicant was physically and mentally disturbed and thereafter their entire family migrated to Mysore for survival. Finally, during the month of January 2024 when the applicant was able to monitor his case, it came to his knowledge that his counsel on record died on 15.01.2024 and thereafter, he contacted his present counsel and filed this application along with condone delay of 40 days in filing this application which was allowed by this court on 18.10.2024 in A.No.2056 of 2024.

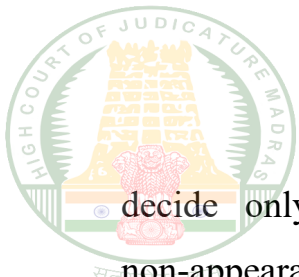
3. Per contra, the learned counsel for the Judgment debtor submitted that the reason for delay particularly concerning the counsel's death was not adequately



explained with regarding to the non-appearance of the counsel prior to his death which lead to the dismissal of A.No.720 of 2023. It is further submitted by the Judgment debtor that the applicant is in the usual habit of delay in the proceedings and it is clear from the conduct of the applicant wherein the Hon'ble High Court in its Judgment dated 08.12.2008 specifically directed the applicant to deposit the balance sale consideration on or before 31.01.2009 which was clearly ignored by the applicant who later came up with an application to condone the delay of 396 days in depositing the balance sale consideration. It is also seen that the Judgment debtor has filed her additional counter affidavit stating that no notice was served upon her in the execution proceedings and on the basis of exparte order the applicant obtained a sale deed from this Hon'ble Court on 22.08.2022 and the E.P was terminated on 15.02.2023. Once the E.P is terminated the applicant is not entitled to file an application to order of delivery of possession.

4. On perusal of the entire records, it is seen that the main execution petition filed by the applicant/decree holder under Order 21, Rule 34 of C.P.C directing the Judgment debtor to execute the sale deed of the schedule mentioned property as per the decree in OSA No.340 of 2008 which was allowed by this Court on 06.08.2021 and after execution of the sale deed the E.P was terminated on 15.03.2023. Thereafter, counsel for the applicant filed A.No.720 of 2023 to order delivery of possession in which delivery was ordered on 29.03.2023. Subsequently, the said application was dismissed for default on 17.11.2023. Thereafter, the applicant filed the present application to set aside the order of dismissal and restore A.No.720 of 2023 along with an application to condone delay of 40 days in filing the set aside application which was numbered in A.No.2056 of 2024 and allowed on 18.10.2024.

5. Now, the present application is pending before this court is for setting aside the order of dismissal dated 17.11.2023 of A.No.720 of 2023. Once the delay in filing the application for restoration has already been condoned, now the court is to



decide only whether sufficient cause is made out by the applicant for his non-appearance when the application was dismissed for default. In the case on hand, the reason stated by the applicant is that due to sudden demise of his wife on 01.04.2023 he had been physically and mentally disturbed for few months and apart from that he was taking medical treatment for hernia prostate gland ailment till now. The applicant further stated that after the death of his wife his entire family migrated to Mysore for survival and he had to look and take care of his family members and due to such unpleasant circumstances and his poor health condition he was not able to follow his case by contacting his counsel. In the month of January 2024 he came to know about the death of his counsel on 15.01.2024 and immediately took steps to ascertain the stage of the case and found that the application was dismissed for default. Though this court is not completely satisfied with the reasons stated by the applicant, is of considered opinion that this application is to be allowed in the interest of justice in order to grant one fair opportunity to the applicant who has taken every step by paying the entire registration amount and getting the sale deed registered in his favour.

6. The other objections raised by the respondent that the decree is an exparte decree and the petition for recovery of possession is not maintainable having been filed after the termination of E.P are all questions to be decided in A.No.720 of 2023, but here is a case where the respondent was already set exparte on 29.03.2023 in A.No.720 of 2023 only then this court has passed an order of delivery on 29.03.2023. In such circumstances, the respondent cannot raise these objections in the present application which is only to set aside the order of dismissal dated 17.11.2023 and to restore A.No.720 of 2023.

Accordingly, this application is allowed. No cost.



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