

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3521 of 2012
and
M.P.No.1 of 2012**

M.Ramasamy

.. Petitioner

Vs.

M.K.Subramaniam

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in E.A.No.247 of 2010 in E.P.No.134 of 1996 in O.S.No.292 of 1986, dated 08.06.2011, on the file of I Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.K.Rajendran (No Appearance)

ORDER

This Civil Revision Petition is filed by the revision petitioner/Judgement Debtor as against the order allowing condone delay petition filed by the Respondent/Decree Holder made in E.A.No.247 of 2010 in E.P.No.247 of 2010 dated 08.06.2011 on the file of the learned I Additional District Munsif, Coimbatore.

2.It is seen from the records that the respondent herein/ decree holder filed E.P.No.134 of 1996 (Old E.P.No.89 of 1994) against the revision petitioner to realise the decree amount by bringing the petition mentioned property under Court auction sale. The perusal of records further discloses that the said execution petition was dismissed for default on 25.06.2010 and to restore the same the respondent herein filed E.A.No.247 of 2010 with a delay of 6 days in restoring the E.P on file under Section 5 of the Limitation Act. The said application was allowed on 08.06.2011. Against which the present Civil Revision Petition is filed.

3.It seems that after delay was condoned, the subsequent application filed by the respondent herein in E.A.No.171 of 2011 to restore the E.P was also allowed.

4. Now the only question to be decided in this Civil Revision Petition is whether Section 5 of the Limitation Act is applicable to the execution proceedings?

5. Admittedly, there is a specific provision available under Order 21 Rule 106 of CPC to set aside ex-parte order passed in the execution petition. Under sub rule (3) of rule 106 of CPC prescribed 30 days time for filing application to restore the petition which was dismissed for default. In this case, the execution petition filed by the respondent herein was dismissed for default on 25.6.2010 and to restore the same an application in E.A.No.247 of 2010 was filed, wherein in the affidavit date is mentioned as 29.7.2010. Therefore the respondent herein has not filed the application within the stipulated period of one month as per Order 21 Rule 106 (3) of CPC. Hence the Learned Judge ought not to have entertained the section 5 application. Even though in E.A.No.247 of 2010 the revision petitioner was called absent and set ex-parte and the same cannot be the reason to allow the section 5 application, since the said application itself is not at all maintainable in law and therefore the order of the Learned Additional District Munsif made in E.A.No.247 of 2010 is warranting interference by this Court.

6. When there is a self-contained provision under Order 21 of CPC the application filed to restore the EP beyond the period of 30 days is improper and the same is liable to be set aside. In view of the above, I am inclined to allow this CRP as the order of the trial Court is illegal and not maintainable in law.

7. In the result, this civil revision petition is allowed by setting aside the order passed in E.A.No.171 of 2011 in E.P.No.134 of 1996 in O.S.No.292 of 1986, dated 21.12.2011, on the file of the learned I Additional District Munsif Court, Coimbatore. No costs. Consequently, connected miscellaneous petition is closed.

08.03.2017

Note: Issue order copy on 28.01.2019

Index: Yes

Internet: Yes

vs

To

The Subordinate Judge,
Hosur.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.3521 of 2012
and
M.P.No.1 of 2012**

08.03.2017

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