



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2017
(Reserved on 20.04.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.1576 of 2015

and

MP (MD) No.1 of 2015

A.Balraj (Died)

1) B.Vijayalakshmi

2) B.Arthi

3) B.Paritha

4) B.Gowtham

... Petitioners/Petitioners/Defendants

vs.

S.Mahadevan

... Respondent/Respondent/Plaintiff

Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed on 29.04.2015 in the memo SR.No.1071 of 2015 filed in E.P.No.1 of 2012 in O.S.No.445 of 2002 on the file of the Sub Court, Periyakulam and consequently to number the EA.Sr.No.1920 of 2012 on the file of the Sub Court, Periyakulam.

For Petitioners : Mr.N.Ranjith

For Respondent : Mr.S.M.Senthil Kumar

ORDER

This revision petition is directed against the order passed by the Execution Court on the memo filed by the judgment debtors who are the revision petitioners before this Court.

2.The brief facts of the case is that one Mr.Mahadevan filed a suit in O.S.No.445/2002 on the file of the Sub Court, Periyakulam, against Balraj for recovery of money based on the pro note dated 08.04.1998 for a sum of Rs.2,00,000/-. The said suit was decreed on 21.01.2008. Though the defendant filed written statement, he did not participate in the trial subsequently. Hence, he was set ex parte and decree was passed ex parte. Pursuant to the decree, execution petition was filed by the decree holder by that time, the defendant died and his legal representatives were brought on record. In the said EP, the defendants remained ex parte and ex parte order was passed on 03.02.2012.



3.The case of the revision petitioners is that to set aside the ex parte order passed in the execution petition, they filed EA and the said petition was assigned EA.SR.No.1920/12. Since it was filed with delay, the same was returned. Later, they re-presented the application along with petition under Section 5 to condone the delay of 133 days in re-presenting the application filed under Order 21 Rule 106 CPC to set aside the ex parte order passed in E.P.No.1 of 2012. The petition to condone the delay of 133 days was allowed by the Execution Court on 19.03.2013.

4.But, the application to set aside the order was not found and no order was passed in the said application. Therefore, the defendants filed a memo on 27.04.2015 before the Execution Court, contending that the petition filed to set aside the ex parte order was not taken on file in spite of repeated enquiry in the Registry and it is informed to them that the said petition is missing. In the said memo, the revision petitioners prayed the Trial Court to trace the said petition to set aside the ex parte order and pass orders thereon on merits. The Execution Court has returned the said memo with the following endorsement:-

"இந்த மொமேவில் சொல்லப்பட்டுள்ள E.P.No.1/2012 in O.S.No.445/2002 மனுவில் எதிர்மனுதாரர்கள் / பிரதிவாதிகள் தரப்பில் 19.03.2013க்கு பின் ஒருதலைப்பட்ச உத்திரவை ரத்து செய்ய கோரி எந்த மனுவும் தாக்கல் செய்யப்படாத நிலையில் இந்த மொமே எவ்வாறு ஏற்றுக்கொள்ள இயலும்?"

5.The Execution Court has returned the memo stating that there is no application to set aside the ex parte order as referred to in the memo dated 27.04.2015. This revision petition is therefore filed stating that though the petitioners re-submitted the papers after curing the defects on 05.03.2013 and the delay been condoned on 19.03.2013, the natural corollary is that the petition to set aside the ex parte order ought to have been numbered, but to their dismay, the same is not been numbered, and the memo which was filed bringing to the notice of the Court about the missing of the petition not been taken note of.

6.According to the revision petitioners, they filed a petition to set aside the ex parte order on 08.06.2012 in EASR.No.1920/12. Since it was returned for curing certain defects, they took back the papers and re-presented it with the affidavit and petition to condone the delay of 133 days. The said petition to condone delay under EASR.No.5249/12 was allowed on 19.03.2013. Therefore, this revision petition is filed to set aside the order passed on 29.04.2015 in the memo and consequently to number EASR.No.1920/12 on the file of the Sub Court, Periyakulam.

7.Since there was some doubt regarding missing of the application alleged to have been filed by the revision petitioners under EASR.No.1920/12, this Court has directed the Sub Court,



Periyakulam, to submit a report about it. In response to the said direction, the Court below has submitted the following report:-

'I further submit that on perusal of records EP 1/12 in OS No.445/02 filed by S.Mahadevan against deceased Paulraj and 4 others, and not Execution petition was disposal by my predecessor on 15.10.14.

I further submit that on perusal of records, the deceased Respondent Paulraj was filed setaside petition along with representation delay excuse petition of 5.3.13. On 19.3.13 the representation delay excuse petition was allowed.

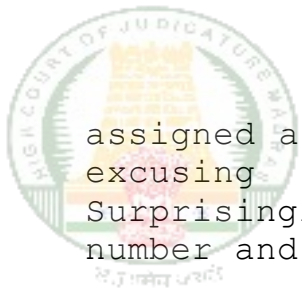
I further submit that on perusal of records, The front side docket of the representation delay petition filed by deceased Respondent Paulraj. there is a pencil endorsement affixing with white cello tape, stated as setaside petition was returned, But in the CR 19 register the counsel for the Respondent signature not obtained for receiving the returned setaside petition. On perusal of the CR19 register column No.15 made entry as SR No.1920/13 the setaside petition was returned on 20.3.13. But the Column No.16 of the CR 19 Register the counsel signature not obtained.

I further submit that SR No.1920/13 the setaside petition filed by the R1 deceased Paulraj not available in the EP records.'

8.The learned counsel for the revision petitioners submitted that the Return Register maintained in the Execution Court for 05.03.2013 shows that under SR.No.1920 in REP.No.1 of 2012, papers were returned on 20.03.2013 which indicates that the papers which were assigned SR.No.1920/12 refers to the petition filed under Order 21 Rule 106 CPC. To verify the said contention, this Court called for the entire records from the lower Court.

9.On scrutinising the entire records, this Court finds that SR.No. 1920 relates to the vakalat filed by P.S.Ganesh for the revision petitioners. This was first filed before the Sub Court on 08.06.2012. From the records, this Court is also able to find that counter filed by the 2nd respondent in REP.No.1 of 2012 on the same day and SR.No.1920 is also recorded in it. This counter is in respect of the execution petition wherein, the 2nd respondent has stated that the execution is neither executable nor valid and she has taken out an application to set aside the ex parte decree passed against them on 21.01.2008.

10.Therefore, it is very clear that EA.SR.No.1920/12 which is referred to in this revision petition pertains to the vakalat filed by the revision petitioners along with the counter in R.E.P.No.1 of 2012 and not the application to set aside the ex parte order as alleged by them. No doubt, there is a document



assigned as EASR.No.5249/12 wherein, the Court has passed an order excusing the delay of 133 days in filing the petition. Surprisingly, this application is not even been assigned any number and it stands with stamped register number alone.

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11.In any event, on perusing all the records and after hearing the counsel for the revision petitioners, it is very clear that the revision petitioners herein have first of all not filed any application to set aside the ex parte order so far. The statement of the revision petitioners that their petition to set aside the order passed in EA was assigned SR.No.1920/12 is incorrect.

12.Under these circumstances, the prayer in this revision is unsustainable and therefore, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Sub Court,
Periyakulam

2. The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.SARAVANAN Advocate in SR. No.53579
+1cc to Mr.M.SENTHIL KUMAR Advocate in SR. No.53896

NBI
JS/SV.SAR.4/4P-5C/3.05.2017

Pre-Delivery order made in
CRP (NPD) (MD) No.1576 of 2015
24.04.2017