



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2017

CORAM:

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN**

C.R.P. (MD) Nos. 933 of 2017 (NPD)

and

C.M.P. (MD) No. 4091 of 2017

1. Mallika

2. Veerasundaram

.. Petitioners

Vs.

Govindammal, (died after decree)

W/o. Swaminathan

1. Sundaresan

.. Respondent

Prayer : Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order dated 10.12.2016 made in E.P.No.54 of 2016 in O.S.No.48 of 2011 on the file of the Principal Subordinate Judge of Kumbakonam.

For Petitioner

:: Mr.A.Saravanan

#### ORDER

The Execution Petition in E.P.No.54 of 2016 in O.S.No.48 of 2011 has been filed by the respondent herein / decree holder on the file of the Principal Subordinate Judge, Kumbakonam pursuant to the *ex parte* decree passed in the suit on 31.10.2011.

2.The petitioners herein who are the judgement debtors had contended before the Execution Court that they have filed Interlocutory Application to set aside the *ex parte* decree along with Section 5 application to condone the delay of 1660 days in filing the said application. So till both the applications are pending, the Execution Court should not proceed further.

3.Whereas the Execution Court, after considering the submission of the Judgement debtor, has passed the order in the Execution Petition as under:

*"Records perused. Petitioner is the Decree holder had filed suit for declaration and possession. Admittedly the suit was decreed as *ex parte* on 31.10.2011. Since there is no stay is pending it is not necessary to stop the execution proceedings. In the interest of justice, it is necessary to pass order in the execution petition."*

<https://hcservices.ecourts.gov.in/hcservices/>

4.The revision petitioners herein submitted that the



Execution Court ought to have first considered the application filed by the petitioners seeking to set aside the *ex-parte* decree and condone delay application before passing the impugned fair and decreetal order in the Execution Petition.

5. To ascertain, whether at all, any application to condone delay and to set aside the *ex parte* decree has been filed by the revision petitioners, this Court went through the pleadings of the revision petitioners. Neither in the revision petition nor in the application filed by the revision petitioners before the Execution Court, they have mentioned the date at which they have filed the petition to set aside the *ex parte* decree along with Section 5 application. When the learned counsel for the revision petitioner was asked to clarify about the date at which the said application was filed, he referred to page nos. 11 and 12 of his typed-set, wherein there is no reference or indication about the date at which the said applications were filed before the Execution Court and pending. Without furnishing the details about the filing of the Interlocutory Application to set aside the *ex parte* order along with Section 5 application, the revision petitioners had sought the indulgence of the Execution Court to stop further proceedings of the execution.

6. The Trial Court has rightly rejected such a baseless request and allowed the Execution Petition by ordering delivery. This Court finds no illegality in it. Having regard to the facts stated above, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition CMP(MD)No.4091 of 2017 stands closed. No Costs.

Sd/-  
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To  
The Principal Subordinate Judge,  
The Subordinate Court,  
Kumbakonam.

Copy to:  
The Section officer, VR Section,  
Madurai Bench of Madras HighCourt, Madurai.

+1cc to Mr.A.Saravanan, Advocate, SR.54323/17

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