



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD)No.424 of 2018 (NPD)

K.Kanthavel .. Petitioner /Petitioner / plaintiff

Vs.

1.Ramachandran

2.Chokkalingam .. Respondents /Respondents / Defendants

Petition filed under Section 115 of C.P.C., as against the fair and decreetal order dated 18.01.2018 in E.A.No.14 of 2017 in E.P.No.10 of 2005 in O.S.No.136 of 1998 by the learned District Munsif, Mudukulathur, Ramanathapuram District.

For Petitioner : K.Kanthavel
(Party-in-person)

ORDER

When the matter came up for admission on 15.03.2018, the petitioner / party-in-person submitted that though he got decree in his favour and filed execution petition in the year 2005, till date the execution proceeding has not been completed. He would further submit that due to non mentioning of the next date of hearing by the Court below, he could not appear before the Court on the relevant date, but the Court below has dismissed the execution petition for default. For restoring the same, the petitioner has filed I.A.No.14 of 2017. But the Court below has dismissed the same without giving sufficient opportunity to the petitioner. As there was no particulars about the dates on which the petitioner was not appeared before the Court in the execution proceeding, this Court called for report from the Court below.

2. Today, the report of the Court below is received. A perusal of the impugned order would go to show that since only on the date of hearing ie., on 20.11.2017, the petitioner had failed to appear before the Court, the Court below has dismissed the execution petition for default. The Court below might have given another opportunity to the petitioner for his appearance. Further, the Court below has dismissed the petition for restoration stating that the petitioner twice left the matter for default and it was



restored, and this is the third time and therefore, the restoration petition cannot be considered. The earlier dismissal of the execution petition for default cannot be the main ground for dismissing the present petition for restoration.

3. According to the petitioner, he had not aware of the next date of hearing and therefore, he could not appear before the Court below on 20.11.2017. Of-course, it is not a valid reason. He must be vigilant enough and follow the proceedings. However, considering the fact that the execution petition was dismissed for default due to non appearance of the petitioner only one date of hearing and there cannot be any reason for the petitioner not to be present before the Court, inspite of getting decree in favour of him and in order to give one more opportunity to the petitioner, this Court is inclined to allow this petition in the interest of justice.

4. In the result, this civil revision petition is allowed and E.P.No.10 of 2005 is restored to the file of the Court below and the Court below is directed to dispose of the above execution petition within a period of three months from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Muthukulathur,
Ramanathapuram District.

+ 1 cc TO Mr.K.Kanthavel , Party in person in SR No. 58129

gcg
AE/SV MMS/SAR1/05.04.2018/2P/3C

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