



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P(MD).No.1413 of 2018 and
CMP(MD).No.6068 of 2018

1.Ramalakshmi
2.Minor Kalidoss
(rep. by 1st petitioner)

... Petitioners

Vs.

Bhagyalakshmi

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order of return dated 22.06.2018 in E.A.No..... un-numbered / 2018 in E.P.No.29 of 2016 in O.S.No.181 of 2008 and direct the learned District Munsif, Bodinayakanur to number the set aside petition along with condone delay petition.

For Petitioner

... Mr. S. Pandiyaraj

ORDER

This Civil Revision Petition is filed to set aside the order of return, dated 22.06.2018 passed in E.A.No. un-numbered / 2018 in E.P.No.29 of 2016 in O.S.No.181 of 2008 and to direct the learned District Munsif, Bodinayakanur to number the set aside application along with condone delay petition.

2. The revision petitioners, who are the Judgment-Debtors, were set ex-parte in the Execution Proceedings in E.P.No.29 of 2016, on the file of the District Munsif Court, Bodinayakanur and hence, they have filed an application to set aside the ex-parte order, invoking proviso under Order 21 Rule 105(3) CPC and also to condone the delay of 47 days, which is beyond 30 days in filing an application to set aside the ex-parte order, as per the Order 21 Rules 104 and 106 CPC, as amended by Madras High Court, dated 1.11.1972 and the said application was returned. Challenging the said return, the petitioners herein have filed the present Civil Revision Petition.

3. The learned counsel appearing for the petitioners has relied on the Judgment passed by this Court, which was reported in 2011(6) CTC 268 (N. Rajendran Vs. Shriram Chits Tamil Nadu Pvt. Limited. Rep.by its Branch Manager / Foreman), in which, this



Court has considered that Section 5 of the Limitation Act will not apply to condone the delay in filing application to set aside the ex parte order in the Execution Petition, but, the delay can be condoned under the Proviso Rule 105(3) CPC introduced by the Madras High Court amendment, dated 01.11.1972.

WEB COPY

4. It is made clear that Section 5 of the Limitation Act does not apply for setting aside the ex-parte order passed in the Execution Proceedings. But, the delay can be condoned under the Proviso Rule 105(3) CPC, as the said proviso introduced by the Madras High Court amendment dated 01.11.1972 and the said proviso empowered the Executing Court to condone such a delay.

5. Since the said proviso introduced by the Madras High Court amendment, dated 01.11.1972, empowered the executing Court to condone such a delay without going through the same, the learned Judge has returned the application and hence, the application is ought to be numbered and the delay has to be condoned, in accordance with law. Considering the proviso introduced by the Madras High Court Amendment, dated 01.11.1972, this Court is inclined to allow this Civil Revision Petition.

6. In the result,

(i) This Civil Revision Petition is allowed by setting aside the return order dated 22.06.2018 passed in un-numbered E.A.No. un-numbered / 2018 in E.P.No.29 of 2016 in O.S.No.181 of 2008, on the file of the learned District Munsif, Bodinayakanur.

(ii) The learned District Munsif, Bodinayakanur is directed to number the Execution Application within a period of one week from the date of receipt of a copy of this order and thereafter, dispose of the same within a period of four weeks.

(iii) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The District Munsif,
Bodinayakanur

2.The Section Officer,
ER.Section,
Madurai Bench Of Madras High Court,



3.The Section Officer,
VR.Section,
Madurai Bench Of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.S.Pandiya Raj Advocate in SR.No.72582.

TRP

DS/SKN/SAR-3 :07.08.2018: 3P/6C

C.R.P(MD) .No.1413 of 2018 and
CMP(MD) .No.6068 of 2018
12.07.2018.