



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2018
CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD) No.163 of 2013
and
M.P. (MD) No.1 of 2013

Balasubramanian

...Revision Petitioner

vs.

1.Subramani

2.Ramasamy

... Respondents

Prayer:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 05.07.2012, passed in E.A.No.132 of 2008 in E.A.No.78 of 2008 in E.P.No.267 of 2007 in O.S.No.563 of 2004 on the file of the Additional District Munsif Court, Dindigul.

For Petitioner : Mr.M.Saravanan

For R1 : Ms.Kanimozhi Mathi for
Mr.A.Thiyagarajan

For R2 : Mr.R.T.Arivukumar

ORDER

This civil revision petition is directed against the order passed in E.A.No.132 of 2008 in E.A.No.78 of 2008 in E.P.No.267 of 2007 in O.S.No.563 of 2004 on the file of the Additional District Munsif Court, Dindigul.

2.The judgment debtor in the suit in O.S.No.563 of 2004 is the revision petitioner.

3.The second respondent in this civil revision petition filed a suit in O.S.No.563 of 2004 on the file of the Additional District Munsif Court, Dindigul, for recovery of a sum of Rs.62,500/- along with interest of 6% per annum for the principal sum of Rs.50,000/-. The suit was decreed by judgment and decree dated 17.09.2004.

4.The second respondent later filed an Execution Petition in E.P.No.267 of 2007. The property of the revision petitioner was brought to sale by Court auction in the execution proceedings in E.P.No.267 of 2007 and it is admitted that the sale was confirmed in favour of the first respondent in this civil revision petition.



5. Thereafter, the first respondent in this civil revision petition filed E.A.No.78 of 2008 for delivery. It is not in dispute that the revision petitioner also filed a petition to set aside the sale and the status of the petition is not fully revealed in this proceedings. Since the revision petitioner did not file any counter, the application filed by the first respondent for delivery in E.A.No.78 of 2008, was allowed ex parte. The lower Court passed an ex parte order dated 29.07.2008, as the revision petitioner did not file any counter.

6. On the very next day, i.e., 30.07.2008, the revision petitioner filed an application in E.A.No.132 of 2008 to set aside the ex parte order under Order XXI Rule 106 r/w under Section 151 CPC.

7. In the affidavit filed in support of the petition in E.A.No.132 of 2008, the revision petitioner has stated the reasons for his non appearance on 29.07.2008. The said petition was resisted by the first respondent mainly on the ground that the revision petitioner has not given sufficient reasons to set aside the ex parte order. The trial Court dismissed the said application on the ground that the revision petitioner has not given proper reasons for his non appearance on 29.07.2008. Challenging the said order in E.A.No.132 of 2008, the revision petitioner has preferred the above civil revision petition.

8. The learned senior counsel for the petitioner submitted that there is no delay or negligence, on the part of the revision petitioner to approach the Court. He further submitted that when the application is filed to set aside the ex parte order on the very next day with reasons, the lower Court ought to have held that the revision petitioner has given proper reasons, explaining his non appearance on 29.07.2008 and that the order of the lower Court, without considering the explanation and reasons stated in the affidavit filed in support of the petition is arbitrary.

9. The learned counsel appearing for the first respondent submitted that the conduct of the revision petitioner should be seen in this case and that there is no ground to interfere with the order passed by the lower Court in view of the constant attempts of the revision petitioner to drag on the proceedings.

10. The learned counsel for the first respondent further stated that the revision petitioner has all along been making attempts only to delay the delivery for no reason. He further pointed out the position that no valid defence has been raised in the counter affidavit filed by the revision petitioner in E.A.No.78 of 2008 and allowing the revision will cause serious prejudice. Since the revision petitioner has no case on merits in the application for delivery, it is submitted that this Court need not to entertain this civil revision petition.



11. Considering the rival submissions the short issue that arises for consideration in this case is whether the revision petitioner has shown sufficient reason for his non appearance on 29.07.2018, when E.A.No.78 of 2008 was posted for hearing. The order of the lower Court indicate non consideration on merits regarding the case pleaded by the revision petitioner showing bias. The fact that the lower Court has ordered delivery, is also cited by the learned counsel for the respondents as a reason to dismiss the civil revision petition.

12. The learned senior counsel appearing for the respondents submitted that the matter has been dragged unnecessarily by the revision petitioner by filing several petitions before the concerned Court one after another to stall the property being handed over to the first respondent and that therefore, there is no bona fide in pursuing to the above civil revision petition.

13. Having regard to the admitted position that an application has been filed on the very next day to set aside the ex parte order dated 29.07.2018, this Court does not suspect the bona fides of the revision petitioner. The revision petitioner being the judgment debtor has to be given an opportunity to contest the case on merits.

14. In that view of the matter, the order passed in E.A.No.132 of 2008 in E.A.No.78 of 2008 in E.P.No.267 of 2007 in O.S.No.563 of 2004 on the file of the Additional District Munsif Court, Dindigul, is set aside and the application in E.A.No.132 of 2008 in E.A.No.78 of 2008 in E.P.No.267 of 2007 in O.S.No.563 of 2004 on the file of the Additional District Munsif Court, Dindigul stands allowed. The application filed by the respondents in E.A.No.78 of 2008 shall be decided on merits after hearing the revision petitioner. The Additional District Munsif Court, Dindigul, is directed to dispose of the application in E.A.No.78 of 2008 in E.P.No.267 of 2007 in O.S.No.563 of 2004 within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Additional District Munsif,
Dindigul.

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



+1CC to Mr.R.Subramanian, Advocate, SR.No. 77066
+1CC to Mr.A.Thiyagarajan, Advocate, SR.No.77126
+1CC to Mr.R.T.Arivukumar, Advocate, SR.No.77301

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C.R.P. (MD) (NPD) No.163 of 2013 and
M.P. (MD) No.1 of 2013
03.08.2018

MM

ES/SKN/RSK/SAR 4/25.10.2018/4P/5C