



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

C.M.P. (MD) No.2491 of 2019

in

CRP(MD) No.SR6415 of 2019

and

C.R.P. (MD) No.SR6415 of 2019

in C.M.P. (MD) No.2491 of 2019

T.B.Srinivasan

... Petitioner

vs.

T.Muruganandam

... Respondent

PRAYER in CMP(MD)No.2491/2019:- Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 114 days in preferring the above revision against the order dated 03.12.2018 in E.P.No.151 of 2018 in O.S.No.445 of 2015.

PRAYER in CRP(MD)SR.6415/2019:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 03.12.2018 ordering notice to the respondent in E.P.No.151 of 2018 in O.S.No.445 of 2015 on the file the learned Additional District Munsif/Executing Court, Tiruchirappalli.

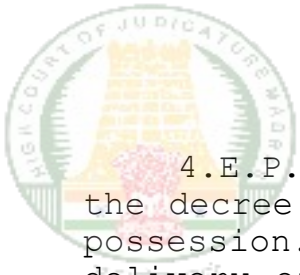
For Petitioner : Mr.S.C.Herold Singh

ORDER

The Civil Miscellaneous Petition has been filed to condone the delay of 114 days in preferring the above revision.

2.C.R.P. (MD) No.SR6415 of 2019 has been filed to set aside the order dated 03.12.2018 ordering notice to the respondent in E.P.No.151 of 2018 in O.S.No.445 of 2015 on the file the learned Additional District Munsif/Executing Court, Tiruchirappalli.

3.Before the trial Court, the petitioner herein is the decree holder and the respondent herein is the defendant. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.



4.E.P.No.151 of 2018 was filed by the decree holder based on the decree passed in the suit in O.S.No.445 of 2015 for delivery of possession. Originally, the suit was filed by the plaintiff for delivery of possession of the suit property. The suit was decreed on 14.06.2018 and two months time was granted to the defendant to hand over the possession to the decree holder. Based on the decree, the decree holder preferred E.P.No.151 of 2018 for ordering delivery of possession as per decree passed on 14.06.2018 and in the said E.P., the Executing Court ordered notice to the defendant on 03.12.2018 and to call on 02.01.2019 and batta in 3 days. This is the order, on which, the decree holder aggrieved and has preferred the present Civil Revision Petition and in preferring the said revision, there is a delay of 114 days caused by him.

5.Heard the learned counsel for the petitioner/decreed holder.

6.The decree holder contended that when the execution petition filed for delivery of possession within a period of two years from the date of orders, no service of notice is required to be ordered and hence, the ordering of notice by the Executing Court is erroneous.

7.On perusal of the records, it is observed that in the said suit though the defendant did not appear before the trial Court, by examining the decree holder and also verifying the document the decree was passed on 14.06.2018 and hence, there is no erroneous and irregularity in the said order.

8.In view of the above, it is observed that the decree holder has not complied with the order of notice to the defendant. The decree holder has filed the present miscellaneous petition to condone the delay of 114 days, whereas, if he had complied with the said order by this time, the said E.P., would have been disposed of. Hence, it is observed that the decree holder himself has now undertaken to proceed with the said E.P., as per the order of the concerned Court and causing so much delay to proceed the case. Hence, this Civil Miscellaneous Petition is dismissed with cost of Rs.500/-. The petitioner herein/decreed holder is directed to pay a sum of Rs.500/- to the credit of Chief Justice Relief Fund within a period of two weeks from the date of receipt of a copy of this order and he is directed to cooperate with the Executing Court for early disposal of E.P.No.151 of 2018. Consequently, connected CRP(MD) No.SR6415 of 2019 is also rejected at the SR stage itself.

Sd/-

Assistant Registrar(CS-II)

// True Copy //



To

The Additional District Munsif/
Executing Judge,
Tiruchirappalli.

Copy to : The Section officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate in SR-58466

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PK/23.04.2019 : 3P/4C