



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Review Application No.128 of 2021
in
CRP(NPD).No.3607 of 2018

1.J.Shiyamala
2.J.Balu
3.J.Krishnan

...Petitioners/ Petitioners

Vs.

1.S.Gopalakrishnan
2.Kamalam
3.Annapoorani

...Respondents/ Respondents

Prayer: Review petition filed under Order 47, Rule 1 of C.P.C., seeking to review the order made in CRP(NPD) No.3607 of 2018 dated 10.11.2000 in so far since the order is passed without granting sufficient opportunity to the revision petitioners and in view of the above fact of error on face of it, this Hon'ble Court may be pleased to set aside the order dated 10.11.2020.

Prayer in CRP(NPD) No.3607 of 2018: Civil Revision Petition filed under section 115 of the Civil Procedure Code against the EA.No.381/2012 in EA.No.241/2012 in EP.No.47/2011 in OS.No.45/2010 on the file of the II Additional Sub Judge at Coimbatore.

For Petitioners : Mr.Kanmani Annamalai
for Mr.T.Arunkumar

For Respondents : Mrs.Reshmichristy

O R D E R

This review application has been filed seeking review of the order dated 10.11.2020 made in CRP(NPD).No.3607 of 2018. The said Civil Revision Petition was directed against an order dismissing an application filed by the applicants herein under Order 21 Rule 97 of C.P.C. There was no representation for the petitioners on the date when the Civil Revision Petition was listed. I had disposed of the civil revision petition as



follows:

"2.It is seen from the records that the Revision is filed against an order dismissing an application filed under Order 21 Rule 97 of the Code of Civil Procedure. An order deciding an application under Order 21 Rule 97 is an appealable order, in view of Rule 103 of Order 21 of the Code of Civil Procedure. Hence, the Civil Revision Petition is rejected as not maintainable. No costs. Consequently, the connected miscellaneous petitions are closed."

2.Though the counsel for the review applicants would seek to re-argue the civil revision petition, once it was pointed out to him that no purpose would be served by re-arguing the Civil Revision Petition as an order dismissing the application under Order 21 Rule 97 made upon determination of the questions under Order 21 Rule 101 is to be treated as a decree, in view of the Rule 103 of Order 21 of C.P.C. There upon, the learned counsel would seek liberty to file appeal against the order of the Executing Court that was impugned in the revision dated 23.03.2018. I find some justification in the request of the learned counsel for the review applicant.

3.Mrs.Reshmi Christy, learned counsel appearing for the respondents would submit that the suit was decreed in the year 2011 and the auction purchaser is kept at bay, though he has paid the entire sale consideration. No doubt, there is some delay but a fair opportunity should also be given to the claimants / review applicants to file an appeal against the order impugned in the revision which in terms of Rule 102 of Order 21 C.P.C., determines all questions arising between the claimant and the decree holder or the auction purchaser as the case may be. It is a settled law, an application under Order 21 Rule 97 will have to be tried as a suit. I therefore, find that an opportunity should be given to the review applicants to file an appeal against the original order of the Trial Court dated 23.03.2018.

4.In view of the above, I find that there are no grounds for review and the review application is dismissed. However, liberty is given to the review applicants to file an appeal against the order dated 23.03.2018 before the competent Appellate Court.

5.Considering the fact that this civil revision petition was filed without any delay and the fact that there was general stay of all further proceedings in view of the pandemic, the review applicants are granted 30 days time from today to file an appeal against the order dated 23.03.2018. The Appellate Court namely, the District Court, Coimbatore is required to entertain the appeal without insisting on a petition for condonation of delay,



if it is filed within 30 days from today and proceed with the same on merits.

6. If such appeal is filed within time, the Appellate Court shall make all endeavours to dispose of the same within a period of six months from the date of its inception. It will be open to the Appellate Court to consider service of notice on the counsel, who are appearing for the parties in the pending execution petition namely, EP.No.47 of 2011. The Executing Court will defer execution for 45 days from today to enable the review applicants to approach the Appellate Court. The Registry is directed to return the certified copies of the fair and decreetal order filed along with the Civil Revision Petition to the counsel for the review applicants.

7. Accordingly, this review application is disposed of with the above directions.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Sub Judge,
Coimbatore.

2.The District Court,
Coimbatore.

+1cc to Mr.K.V.Sajeevkumar, Advocate Sr No.52679

+1cc to Mr.T.Arun Kumar, Advocate Sr No.52256

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BS (CO)
PR (22/10/2021)