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C.R.P.(NPD).No.2488 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2488 of 2021

and

C.M.P.No.18751 of 2021

Philomina

.. Petitioner

Vs.

G.L.Raman (Died)

1.G.R.Bellie

2.G.R.Chandran

3.G.R.Sundran

4.G.R.Siva Kumar

5.G.R.Jamnaki

6.G.R.Sundari

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 24.08.2021 in E.A.No.1 of 2020 in E.P.No.3 of 2013 in O.S.No.23 of 1999 on the file of the District



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Munsif Cum Judicial Magistrate Court, Kothagiri and allow the C.R.P.

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For Petitioner : Mr.R.Sunilkumar

ORDER

This Revision is against the order made in E.A.No.1 of 2002 filed by the judgment debtor in O.S.No.23 of 1999.

2. The said suit was filed by the predecessor in interest of the respondents one Mr.G.L.Raman seeking delivery of possession. Though, the suit was initially dismissed. An appeal against the said judgment and decree was allowed on 18.04.2005 and further second appeal by the defendant/ petitioner herein came to be dismissed by this Court on 09.04.2012.

3. Thereafter, the decree holder sought to execute the decree. Since the original decree holder died, his legal representatives were brought on record. Since the notice ordered was returned un-served, publication was ordered in one issue of 'Malai Malar' for the hearing on 26.04.2013. Despite



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such publication, the petitioner herein did not chose to appear in the execution proceedings and she was set *ex parte*.

4. Thereafter, a third party obstructed delivery and filed execution application in E.A.No.6 of 2013 under Order XXI Rule 97 of the Code of Civil Procedure. This application came to be dismissed by the trial Court and an appeal filed by the obstructor in A.S.No.30 of 2017 was also dismissed, the said dismissal was confirmed by this Court in S.A.No.86 of 2020 on 31.01.2020.

5. Soon after dismissal of the second appeal on 31.01.2020, the petitioner woke up and filed the present application seeking to set aside the *ex parte* order on 12th February 2020. The *ex parte* order is dated 26.04.2013. The reason assigned in the affidavit filed in support of the application to set aside the *ex parte* order is that she has been living in Metupalayam for the past 8 years and when she came to Kothagiri on 06.12.2020, she was informed by one Shahul Hameed that the said Shahul Hameed had read a news paper advertisement way back in 2013 which



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disclosed that she was required to appear before the trial Court viz., District Munsif, Kothagiri on 26.04.2013 for the execution proceedings. Therefore, according to the petitioner, she came to know about the *ex parte* order only on 06.02.2020 and she filed an application on 12.02.2020.

6. This application was resisted by the respondents contending that the petitioner was always aware of the execution proceedings and she was not interested in prosecuting the same. Even according to her, she had left Kothagiri and is living in Mettupalayam. The story that has been spun by her as to how she got information about the order itself, according to the respondents, is not true. The respondents also pointed out that the counsel who appeared for the obstructor is the counsel who had filed this petition seeking to set aside the *exparte* order. Therefore the very *bona fides* of the petitioner were doubted by the respondents.

7. The learned District Munsif, Kothagiri who considered the application, held that there are no *bona fides* in the action of the petitioner. He refused to believe the story that a person remembered a paper publication



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made in the year 2013 for the hearing on 26.04.2013 on 6th February 2020

and informed the petitioner when he accidentally met her at Kothagiri.

Refusing to buy this story, the learned trial Judge rejected the contention and dismissed the application. The fact that the same counsel appeared for the obstructor and the petitioner was also taken note of by the trial Court.

8. The facts demonstrate that petitioner was aware of the proceedings. She was buying time waiting on the fringes to take action. The fact that this petition closely followed the dismissal of the second appeal filed by the obstructor before this Court was taken note of by the trial Court while dismissing the application seeking to set aside the *ex parte* order.

9. No doubt, under Article 123 of the Limitation Act, the time starts to run only from the date of knowledge. The learned District Munsif has found that the petitioner had knowledge of this proceedings earlier and her claim that she came to know of it on 06.02.2013 is false. Even though the petitioner was served by publication, it could be gathered from the facts that the petitioner had knowledge of the order. The Court need not automatically



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apply the explanation to Article 123 of the Limitation Act.

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10. I am therefore of the opinion that the order of the learned trial Judge does not need interference at my hands particularly under Article 227 of the Constitution of India. The Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

19.11.2021

dsa

Index : No

Internet : Yes

Speaking order

To

The District Munsif Cum Judicial
Magistrate, Kothagiri.



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R.SUBRAMANIAN, J.

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