



CRP (NPD) No.2585 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2585 of 2021

1. Venkatachalam @ Venkatesan

2. V.Nagarajan

... Petitioners

Vs

1. C.Kandasamy

2. Rukmani

3. Saraswathi

4. Dhanamani

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order made in E.A.SR No.36777 of 2019 in E.A.No.52 of 2013 in EPR No.108 of 2011 in O.S.No.528 of 2010, dated 29.03.2021, on the file of the II Additional Sub Court, Coimbatore.

For Petitioner : Mr.C.Veera Raghavan



ORDER

WEB COPY

Considering the limited scope of the Revision and the nature of the order that is challenged, notice to the respondents is deemed unnecessary.

2. The challenge in this revision is to the returns made by the learned II Additional Sub Judge, Coimbatore on a petition filed by the petitioner seeking restoration of E.A.No.52 of 2013 which was dismissed for default on 15.03.2018. The said Execution Application was filed by the petitioners who are third parties under Order XXI Rule 97 of C.P.C.,. The petitioners filed another application under Order XXI Rule 106 r/w 151 of C.P.C., seeking restoration of the execution application that was dismissed for default. The trial Court returned the applications, requiring the petitioners to show cause,

(i) how the petition is maintainable after possession has been delivered and recorded.

(ii) E.A.No.52 of 2013 was dismissed on 15.03.2018 above 30 days. Hence, how this petition is maintainable



(iii) correct provision of law to be mentioned.

WEB COPY

3. The same was represented answering the quarries raised and relying upon the Judgment reported in **2011 (6) CTC 268**, wherein this Court had held that Section 5 of Limitation Act is applicable as per Rule 105 (4) of C.P.C. There is no bar for the Court to hear an application under Order XXI Rule 97 after delivery of possession as the Court will have power to order restitution under Rule 99 of Order XXI of C.P.C.

4. There is also another view taken by this Court in ***T.Natarajan Vs. S.Tejraj and another reported in 2021 (1) CTC 295*** that if the Execution proceedings are not posted for hearing as contemplated under Order XXI Rule 106 of C.P.C., the Limitation for setting aside the dismissal would not be 30 days, but three years.

5. In view of the above, the returns made by the learned Subordinate Judge are not fully justified. Hence, the petitioner is required to represent the execution application, explaining as to how the application



CRP (NPD) No.2585 of 2021

is within time and the learned Subordinate Judge is required to number the application and proceed to dispose of the same in accordance with law. The

Civil Revision Petition is dismissed. No costs.

01.12.2021

vum

Index: Yes/No

Speaking order / Non speaking order

Note: Registry is directed to return the original petition that has been filed along with this Civil Revision Petition forthwith to enable the counsel to represent the same.

To:

1. The II Additional Sub Court, Coimbatore.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



WEB COPY



CRP (NPD) No.2585 of 2021

R.SUBRAMANIAN, J.

vum

CRP (NPD) No.2585 of 2021

01.12.2021