



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

**C.R.P. (MD) No.1293 of 2021**

**and**

**C.M.P. (MD) No.7460 of 2021**

V.K.Nalluswamy

... Petitioner

vs.

Kathirvel

... Respondent

**PRAYER:-**This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order made in E.A.No.68 of 2018 in E.A.No.67 of 2016 in E.P.No.67 of 2015 in O.S.No.34 of 2013 on the file of the learned District Judge, Karur District.

For Petitioner : Mr.S.Gokulraj

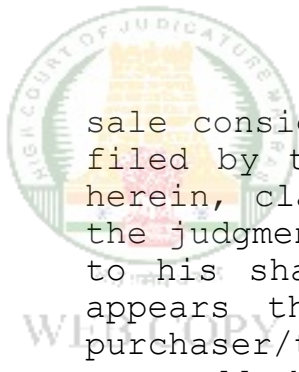
For Respondent : Mr.V.Meenakshi Sundaram for  
Mr.R.Nireshkumar

**ORDER**

The claimant in an execution proceeding is the revision petitioner before this Court. The order, which is the subject matter of this revision, is the order condoning the delay of 299 days in filing a petition to set aside the *ex parte* order in E.A.No.68 of 2018 in E.A.No. 67 of 2016 in E.P.No.67 of 2015 in O.S.No.34 of 2013 on the file of the learned District Judge, Karur.

2.The above application has been taken out by the Court auction purchaser. The plaintiff in the suit O.S.No.34 of 2013 on the file of the learned District Judge, Karur had obtained a judgment and decree in his favour, in and by which the defendants/judgment debtors were directed to pay a sum of Rs.10,86,800/- together with interest at the rate of 2.10% from the date of the suit till the date of the judgment and thereafter, at 6% till the date of realization. The plaintiff/decreed holder had filed E.P.No.67 of 2015 to bring the property to sale, which had already been attached by the plaintiff in the suit.

3.The above petition was ordered and the property was directed to be sold in public auction. In the public auction, the respondent herein had purchased the property for a sum of Rs.5,02,000/-. The



sale consideration has also been remitted. While so, a petition was filed by the third party/claimant, who is the revision petitioner herein, claiming a right to the property stating that even prior to the judgment of the suit, the property in question had been allotted to his share in a registered partition deed dated 09.10.2013. It appears that in the said petition, in which the Court auction purchaser/the respondent herein, was impleaded as 5th respondent, was called absent and set *ex parte* by order dated 23.02.2017. The auction purchaser therefore took out an application in E.A.No.68 of 2018 to condone the delay of 299 days in setting aside the *ex parte* order dated 23.02.2017.

4.In the affidavit filed in support of the said application, the auction purchaser/respondent herein would plead that he had been suffering from illness from the 3rd week of February and therefore, could not meet his Advocate to instruct him and consequently, an *ex parte* order came to be passed. He would submit that as soon as he was able to meet his Advocate, the application was filed invoking the provisions of Section 5 of the Limitation Act to set aside the *ex parte* order.

5.A counter was filed by the revision petitioner herein denying the statement contained in the petition and contending that the petitioner was colluding with the decree holder.

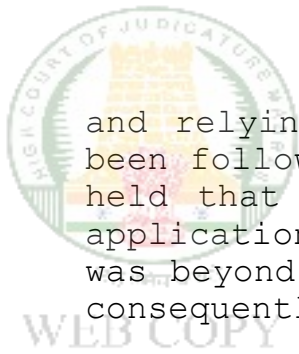
6.The learned District Judge, Karur after hearing the parties was pleased to allow the said application. During the arguments before the learned District Judge, Karur, an argument was put forwarded that Section 5 of the Limitation Act was barred and it was only an application under Order XXI Rule 106 of the Code of Civil Procedure that is maintainable. However, the learned Judge had rejected the plea and allowed the application on condition that a sum of Rs.1,500/- to be paid by the 5th respondent to the claimant. Challenging the same, the petitioner is before this Court.

7.Once again, the only argument that has been advanced is that the provisions of Section 5 of the Limitation Act would not apply to the case of an execution proceedings. The said argument cannot be countenanced, in the light of the amendment of this Court, inserting the following proviso to Order XXI Rule 105 (3), which reads as follows:-

*"Provided that an application may be admitted after the said period of thirty days if the applicant satisfied the Court that he had sufficient cause for not making the application within such period."*

8.This Court had considered the similar facts in the case of ***Pushparaj Vs. Rajayyan and others in C.R.P. (MD) No.613 of 2011.***

After considering the amendment of this Court, inserting the proviso  
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and relying upon the Full Bench judgment of this Court, which has been followed by a single Judge of this Court, finally the Court had held that the order of the Court below refusing to entertain the application to set aside the *ex parte* order on the ground that it was beyond the period of 30 days was not in accordance with law and consequently, had remitted the matter back for fresh consideration.

9.This judgment applies on all fours to the facts of the instant case. In view of the above, the Civil Revision Petition is dismissed, confirming the order passed in E.A.No.68 of 2018 in E.A.No. 67 of 2016 in E.P.No.67 of 2015 in O.S.No.34 of 2013 on the file of the learned District Judge, Karur. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

The District Judge,  
Karur.

+1 CC to M/s.S.GOKULRAJ, Advocate ( SR-37857[F] dated 08/12/2021 )

**C.R.P. (MD) No.1293 of 2021**  
**08.12.2021**

SP(CO)

TR(01.02.2022) 3P 3C