



C.R.P.Nos.3728 and 3730 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.Nos.3728 & 3730 of 2022
and C.M.P.Nos.19678 & 19681 of 2022

Ravi

... Petitioner in both C.R.P's

VS

C.Veerabhadraiah

... Respondent in both C.R.P's

Prayer in C.R.P.No.3728 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decretal order dated 08.03.2022 made in R.E.A.No.3 of 2021 in R.E.P.No.177 of 2021 passed by the learned Subordinate Judge, Denkanikottai, Krishnagiri District.

Prayer in C.R.P.No.3730 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decretal order dated 27.09.2022 made in R.E.A.No.1 of 2021 in R.E.P.No.177 of 2021 passed by the learned Subordinate Judge, Denkanikottai, Krishnagiri District.

For Petitioner : Mr.M.R.Jothimanian
(in both C.R.P's)



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the file of Subordinate Court, Denkanikottai, Krishnagiri District and the petitioner was set exparte in the execution proceedings on 03.08.2018 for his failure to appear before the Court. Subsequently, he filed an application to set aside the exparte order in R.E.A.No.3 of 2021 and also sought for reopening of E.P.

3. In the affidavit filed in support of the said petition, the petitioner had stated that though, he entered appearance in E.P, at the relevant point of time, he was affected by Jaundice and he had taken treatment from a doctor at Salem. He further averred that in view of his illness, he could not contact his counsel and take steps to set aside the exparte order immediately. Though, the petitioner was set exparte on 03.08.2018, the petition to set aside the exparte order was filed by him only on 30.06.2021 nearly after 2 years and 11 months.

4. A vague allegation in the affidavit filed in support of the petition that he was affected by Jaundice at the relevant point of time, may not be sufficient to explain the time gap of nearly 2 years and 11 months in filing the petition to set aside the exparte order. The Court below by relying on Order 21, Rule 106(3), C.P.C. dismissed the petition filed by the revision petitioner on the



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ground that he ought to have filed the petition within 30 days and any application filed to set aside the order beyond the period of 30 days cannot be entertained.

5. First of all, the petitioner has not produced any material to substantiate his statement of illness in the affidavit. Though, in his affidavit he had averred that for the illness of Jaundice, he had taken treatment from a doctor at Salem, he has not produced any doctor's certificate or relevant medical records. It is also pertinent to note that the appeal filed by the petitioner challenging the decree passed against him was also dismissed for default and the same has not been restored to file so far. The petitioner committed default in each and every stage of the proceedings. The first appeal filed by him was allowed to go for default and he remained exparte in execution petition. The petition to set aside the exparte order was filed by him after two years and 11 months. When the petition filed by him to set aside the exparte order was dismissed by the Court by order dated 08.03.2022 in R.E.A.No.3 of 2021, having obtained a certified copy of the said order on 18.04.2022, the petitioner had chosen to file this revision only on 14.11.2022. It is seen from records that the petitioner who obtained the certified copy of the



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order made in R.E.A.No.3 of 2021 on 08.04.2022 had chosen to file this revision, only after allowing of the petition filed by the respondent seeking permission of the Court to cut off the electricity to enable execution of the mandatory injunction part of the decree. This attitude of the petitioner clearly demonstrate the intention of the petitioner to drag on the proceedings and frustrate the decree.

6. In the absence of any acceptable reason for the failure of the petitioner to appear before the execution Court, the Court below is justified in dismissing the petition to set aside the order making him exparte on 03.03.2018. In view of the discussions made above, this Court does not find any infirmity or illegality in the order passed by the Court below. Consequently, C.R.P.No.3728 of 2022 stands dismissed.

7. C.R.P.No.3730 of 2022 is filed challenging the order passed by the Court below allowing the petition filed by the respondent seeking permission of the Court to disconnect the electricity service connection in the suit building to enable the executing Court to execute the mandatory injunction portion of the decree.



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WEB COPY 8. The perusal of the impugned order passed by the Court below would make it clear that unless the electricity service connection available in the offending portions of the suit building are cut off, execution of the mandatory injunction to remove the offending portions of the suit building is not possible. It is settled law that the executing Court has got power to pass incidental orders to enable the Court to execute the decree in its letter and spirit.

9. Therefore, this Court does not find any infirmity or illegality in the order passed by the Court below in allowing the petition filed by the respondent as prayed for. In view of the above, C.R.P.3730 of 2022 is also dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2022

Index : Yes / No
Speaking Order : Yes / No
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S.SOUNTHAR, J.
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To
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The learned Subordinate Judge,
Denkanikottai, Krishnagiri District.

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