



C.R.P.No.643 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.643 of 2021

and

C.M.P.No.5504 of 2021

Arunachalam

...Petitioner

Versus

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order in E.A.No.101 of 2019 in E.P.No.15 of 2019 in O.S.No.28 of 2018 on the file of the Sub-Court, Palacode, Dharamapuri district dated 13.10.2020.

For Petitioner : Mr.M.Muruganantham

For Respondent : Mr.P.Dinesh Kumar

O R D E R

This Civil Revision Petition had been filed by the Defendant in O.S.No.28 of 2018 to set aside the decreetal order in E.A.No.101 of 2019 in E.P.No.15 of 2019 in O.S.No.28 of 2018 on the file of the learned Sub-Judge, Palacode, Dharamapuri.



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2. It is the contention of the learned Counsel for the Revision Petitioner that the Plaintiff/Respondent herein had filed a suit against the Defendant/Petitioner herein in O.S.No.28 of 2018 before the Sub-Court, Palacode, Dharmapuri District seeking a relief of specific performance. Since the Revision Petitioner had not appeared, the Trial Court had passed an exparte decree on 29.08.2018 and subsequently, the Revision Petitioner had filed a petition in I.A.No.402 of 2019 in O.S.No.28 of 2018 seeking to set aside the exparte order by filing the petition to condone the delay under Section 5 of the Limitation Act. Also, in the mean time, the Plaintiff, as decree holder had instituted the Execution proceedings in E.P.No.15 of 2019 in O.S.No.28 of 2018 in which, the Revision Petitioner had filed E.A.No.101 of 2019 in E.P.No.15 of 2019 in O.S.No.28 of 2018. After hearing both parties, the learned Sub-Judge had dismissed the E.A.No.101 of 2019 in E.P.No.15 of 2019 in O.S.No.28 of 2018 as per order dated 13.10.2020.

3. Aggrieved by the dismissal of the E.A.101 of 2019, the Defendant in the suit had approached this Court under Article 227 of Constitution of India.



4. In support of his contentions, the learned Counsel for the Revision Petitioner relied upon the rulings reported in **2011 (6) CTC 268** in the case of **N.Rajendran Vs Shriram Chits Tamil Nadu Pvt. Ltd., rep by its Branch Manager/Foreman** and also the provisions of Order 21 Rule 34(3) which is extracted hereunder:

“15. Order 21, as it was originally enacted in 1908, comprised only of 103 Rules. However, by P.Dis.No.397 of 1945 dated 04.9.1945, Rules 104 and 105 were inserted by Madras (Pondicherry) High Court Amendment, to Order 21. The Rules so inserted read as follows:

"R.104. (1) The Court before which an application under any of the foregoing rules of this Order is pending may fix a day for the hearing of the application.

(2) Where on the day fixed or any other day to which the hearing may be adjourned the applicant does not appear, when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the respondent to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

Explanation.- An application referred to in sub-rule (1) includes a claim or objection made under Rule 58 of this Order.

R.105. (1) The applicant, against whom an order is made under sub-rule (2) of the preceding rule or the respondent against whom an order is passed ex parte under sub-rule (3) of the preceding rule or under sub-rule (1) of Rule 23 of this Order, may apply to the Court to set aside the order and if he satisfies the Court that



there was sufficient cause for his non-appearance, when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the opposite party.

(3) An application under sub-rule (1) shall be made within thirty days of the date of the order or where in the case of an ex parte order the notice was not duly served, the date when the applicant had knowledge of the order.

(4) The provisions of Section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)."

5. With the observation of the learned Sub-Judge that limitation is not applicable to the execution proceedings and placing reliance on the rules framed by the High court of Madras and also the rules framed by the High Court of Andra Pradesh. Therefore, he seeks to set aside the order of the learned Sub-Judge, Palacode, Dharmapuri.

6. The learned Counsel for the Respondent would submit that the Civil Revision petition itself has become infructuous. In the petition to set aside the exparte order in petition to condone the delay, the learned Judge had imposed a cost of Rs.75,000/-(Rupees seventy five thousand only).



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7. Considering the fact that the expenses met by the decree holder in proceeding with the execution petition in continuation of the decree granted by the very same Court in the order itself. It was stated that if the cost was not paid, the I.A.No.402 of 2019 will be dismissed. Accordingly, I.A.No.402 of 2019 in O.S.No.28 of 2018 was dismissed. As cost not paid in continuation of the same, the same was conducted and Execution proceeding was terminated. Therefore, nothing survives as on date execution proceeding was terminated on 16.10.2020.

8. In the light of the submissions made by the learned Counsel for the Respondent and the submissions of the learned Counsel for the Revision Petitioner, who is Defendant in the suit can not at all be accepted since he had been watching the proceedings from the date of exparte decree till this Execution proceeding was terminated.

9. Therefore, nothing survives for further adjudication. Hence, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
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