



C.R.P.No.830 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2023

CORAM

THE HON'BLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.830 of 2021
and C.M.P.No.6925 of 2021

R.B.Annadurai

...Petitioner

Vs.

C.D.Venkatesan

...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order of the learned Principal Subordinate Judge at Puducherry dated 18.02.2021 in E.A.No.1 of 2021 in E.P.No.60 of 2012 in O.S.No.2645 of 1999.

For Petitioner : Mr.S.Sudarshan

For Respondent : Mr.K.S.Sundar

ORDER

The Civil Revision petitioner is the judgment debtor and he was the defendant in O.S.No.2645 of 1999. The said suit was decreed. Being a



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summary suit, he filed a revision before this Court in C.R.P.No.227 of 2001.

The said C.R.P. was allowed on condition that the petitioner shall deposit a sum of Rs.50,000/- towards the suit claim. It was a self working order. In case the deposits was not made, it was ordered that the C.R.P would automatically stand dismissed. The petitioner did not make the deposit and therefore, the petitioner did not get the benefit of the order of this Court.

2. Thereafter, the respondent filed E.P.No.1094 of 2000 to execute the decree in O.S.No.2649 of 1999. It was dismissed for non prosecution by the X Additional City Civil Court, Chennai. Thereafter, E.P.No.30 of 2010 was filed by the respondent before the learned Subordinate Judge, Pondicherry. The said E.P.No.30 of 2010 was dismissed. It was originally filed along with transmit order and non-satisfaction certificate. After verifying the E.P, the same was taken on file, which shows that all the necessary enclosures were available at the time of presentation. Notice was issued to the judgment debtor. In this execution proceeding, i.e., in E.P.No.30 of 2010, the judgment debtor took a stand that the copy of the transmit order is missing and therefore the E.P is in-executable.



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3. Taking note of this stand, the execution petition was dismissed on 14.09.2010. Being left with no other option, the decree holder filed another application to transmit the decree passed on 16.07.1999, as confirmed by judgment and decree on 03.06.2002 in O.S.No.2645 of 1999 on the file of the VII Assistant Judge, City Civil Court, Chennai. He wanted the decree to be sent to the file of Subordinate Court, Pondicherry. He filed another execution petition in E.P.No.60 of 2012. Yet again, the transmit order, decree copy and satisfaction certificate were missing.

4. It is surprising, the manner in which the transmit order, decree copy and satisfaction certificate seem to be missing, especially when the learned counsel who is appearing before that Court happens to be the judgment debtor. No objection was raised regarding lack of the enclosures to the execution petition till they went missing. No objection was raised by the judgment debtor. After the papers went missing, E.A.No.1 of 2021 was presented to dismiss the execution petition as barred by time. The learned



trial Judge dismissed the petition, against which the present revision petition.

5. Heard Mr.Sudarshan, the learned counsel appearing for civil revision petitioner and Mr.K.S.Sundar, the learned counsel appearing for the respondent.

6. I have gone through the records. The primary objection of Mr.Sudarshan, the learned counsel for the petitioner, is that the suit was decreed on 16.07.1999 and it became barred by time on 16.07.2011 and the execution petition filed in 2012 is hopelessly barred by time. I have to take note of the fact that E.P.No.30 of 2010 was filed in time. It is during the course of execution that the papers went missing. For the papers having gone missing, a decree holder cannot be held responsible. The Court ought to have by itself rectified the mistake and should have re-constructed the Execution petition. Instead, it made the decree holder to run from pillar to post and asked him to file fresh execution petition. Therefore, E.P.No.60 of 2012 was filed for rectifying the mistake committed by the Court. It is too well settled that for the mistake of the Court no party should be prejudiced



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Actus legis nemini facit injuriam.

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7. I would not treat E.P.No.60 of 2012 as fresh execution petition, but as reconstruction of the papers which had been lost by the Court in E.P.No.30 of 2010. Therefore, E.P.No.60 of 2012 was properly presented. It is surprising to know that the judgment debtor is aware that the papers are missing in Court, which even the Court staff was not aware at the time of numbering and processing of the execution petition. It is the duty of the Court to have re-constructed the papers in E.P.No.30 of 2010 and should not have pushed the decree holder to file a fresh petition. Unfortunately, it did so. For the fault of the Court, a litigant cannot suffer as already stated above. It is the fault of the Court that the papers in E.P.No.30 of 2010 went missing and E.P.No.60 of 2012, though has been given a new number is at best a reconstruction of the lost papers. It should not be treated as a fresh execution petition. Therefore, objection on limitations fails. Accordingly, this Civil Revision Petition is dismissed with costs of Rs.10,000.00/- (Rupees Ten Thousand only). Consequently, connected miscellaneous petition is closed.



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Index:Yes/No

Speaking Order: Yes/No
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To

1.The Principal Subordinate Judge at Puducherry.

2.The Section Officer,
VR Section,
High Court of Madras.



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V.LAKSHMINARAYANAN.J,

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