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C.R.P.No.4085 of 2017
and C.M.P.No.19167 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE N.SESHASAYEE**

C.R.P.No.4085 of 2017
and C.M.P.No.4668 of 2018

K.Shanmughavel

.. Petitioner

Versus

D.Radhammal

.. Respondent

Prayer: Petition filed under section 115 of Civil Procedure Code, seeking to set aside the Fair and decretal order passed by the learned Principal District Munsiff Court, Alandur in E.A.No.100/2017 in E.A.No.123 of 2014 in E.P.No.143 of 2007 in O.S.No.837/2004 dated 11.09.2017.

For Petitioner : Mr.K.Shanmugavel, P-IN-P

ORDER

This Revision is filed challenging an order passed in E.A.No.100/2017 in E.A.No.123 of 2014 in E.P.No.143 of 2007 in O.S.No.837/2004 dated 11.09.2017 by the learned Principal District Munsiff Court, Alandur.

2. The Revision Petitioner herein filed a suit in O.S.No. 837 of



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2004 before the District Munsif Court, Alandur. The suit was laid for ejectment of tenants. The defendants did not contest the suit and an exparte decree came to be passed on 04.08.2006. Thereafter, the plaintiff laid E.P.No.143 of 2007, wherein, the Execution Court ordered notice and the same was served on the tenants, and ultimately the issue was decided exparte. Thereafter, the respondent/Judgment Debtor filed an application for setting aside the exparte decree passed against her along with I.A.No.470 of 2014 for condonation of delay of 2739 days in filing the said application under Order 9 Rule 7 of CPC. This came to be dismissed on 15.10.2015. This was not subsequently challenged and thus, the exparte decree had become final.

3. During the pendency of the I.A.No. 470 of 2014, the Judgment Debtor / respondent herein had taken out an application in E.A.No. 123 of 2014 for stay of the execution proceedings under Order 21 Rule 26 CPC till the disposal of the I.A.No.470 of 2014 mentioned above. On 18.11.2015, the Execution Court allowed the E.A.No.123 of 2014 and stayed the execution proceedings essentially because the respondent did not file any



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counter. But, on the date, when the Execution Court allowed the said E.A.No.123 of 2014, the I.A.No. 470 of 2014 had already been dismissed.

4. On 06.11.2017, the Execution Court perused the records and found that in view of the fact that I.A.No.470 of 2014 had already been dismissed on the date when the Court ordered stay in E.A.No.123 of 2014, it has recorded that the application has become infructuous.

5. This is the scenario in which the Judgment Debtor/Respondent herein had filed E.A.No.100 of 2017 for reopening the above said E.A.No.123 of 2014. In the affidavit filed in support of her application, the Judgment Debtor would aver that the counsel was not adequately heard on that date. This was allowed by the Execution Court vide its Order dated 11.09.2017. This Order of Execution Court reopening E.A.No.123 of 2014 by its Order in E.A.No.100 of 2017 is now in challenge.

6. Heard the Managing Hereditary Trustee of the Revision



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Petitioner, who appeared in person. The Respondent/Judgment Debtor has been served, but she did not enter appearance.

7. On hearing the Party-in-Person and perusing the documents, this Court finds that the Execution Court has been far too mechanical in ordering the reopening of E.A.No.123 of 2014 which had been infructuous earlier, on that date, when the Court has passed an Order in allowing E.A.No.100 of 2017. The reason for very filing of that application had been lost to the Judgment Debtor / Defendant and there might have been reasons for reviving E.A.No.123 of 2014, only if the Judgment Debtor had challenged the Order passed in I.A.No. 470 of 2014, that was not done.

8. This Court finds every reason to interfere with the Order of the Execution Court in E.A.N.100 of 2017 as there is a manifest non application of mind by the learned Principal District Munsif, Alandur.

9. The Petitioner / Party in Person would now inform the Court



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that the E.P.No.143 of 2007 is pending before the learned District Munsif, Alandur and it has since been transferred to the newly constituted District Munsif cum Judicial Magistrate, Pallavaram, where, it has not yet been taken on record and renumbered.

10. The learned District Munsif cum Judicial Magistrate, Pallavaram is required to take the said Execution Petition from the stage where it was left subsequent to the disposal of the E.A.No.123 of 2014 as infructuous.

11. The Revision is therefore allowed and the Execution Court is now directed to proceed with the Execution Petition without any further delay. No costs. Consequently, connected Miscellaneous Petition is closed.

23.03.2023

Index: Yes/No
Internet : Yes/No
Speaking Order : Yes/No
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N. SESHASAYEE, J.



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Copy to:

1. The District Munsif cum Judicial Magistrate
Pallavaram

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