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CRP. No.2008 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. Nos. 2008 & 2025 of 2023
& CMP Nos. 12593 & 12668 of 2023

1.V.Ethirajan
2.Yogambal
3.Preethy
4.Nirmala

...Petitioner in both petitions

Vs

1.S.M. Fazal Mohammed
2.Janeera

...Respondents in both petitions

PRAYER in CRP No. 2008 of 2023: This Civil Revision Petition is filed under Section 115 of CPC, to set aside the order dated 16.03.2023 passed in E.A No. 2 of 2022 in E.A No. 3178 of 2016 in E.P No. 1586 of 2010 on the file of the Hon'ble X Assistant City Civil Court, Chennai.

PRAYER in CRP No. 2025 of 2023: This Civil Revision Petition is filed under Section 115 of CPC, to set aside the order dated 16.03.2023 passed in E.A No. 1 of 2022 in E.A No. 3178 of 2016 in E.P No. 1586 of 2010 on the



WEB COPY



CRP. No.2008 of 2023

file of the Hon'ble X Assistant City Civil Court, Chennai.

For Petitioners : Mr.Prakash Goklaney (In both petitions)

For R1 & R2 : Mr.K.V.Sundararjan (in both petitions)

COMMON ORDER

Challenging the impugned order dated 16.03.2023 passed by the X Assistant City Civil Judge, Chennai, in E.A No.1 & 2 of 2022 in E.A No. 3178 of 2016 in E.P No. 1586 of 2010, the petitioners/judgment debtors filed this petition.

2.The petitioners herein filed E.A No. 1 & 2 of 2022 in E.A No. 3178 of 2016 in E.P No. 1586 of 2010 in O.S No. 2815 of 2005, on the file X Assistant Judge, City Civil Court, Chennai, to restore the E.A No. 3178 of 2016 and also for condone the delay of 263 days in restoring the E.A No. 3178 of 2016 which was dismissed for default on 29.10.2021. After considering the submissions on either side, the Court below dismissed the said petitions. Challenging the same the petitioners filed these petitions.

3.The learned counsel for the petitioners submitted that the petitioner filed the petitions to set aside the order dated 29.10.2021 dismissing E.A No. 3178 of 2016 for default and to restore the same. The petitioners filed the said E.A No. 3178 of 2016 for re-delivery of their property measuring an



CRP. No.2008 of 2023

extent of 2284 square feet while the Court ordered 432 square feet only, more fully and particularly mentioned in the B schedule which was recorded on the warrant in EP No. 1586 of 2010. In the middle of the Covid 19 outbreak, this Court has facilitating a hybrid mode of hearing and the advocates were permitted to appear on physical or virtual mode. While being so, the learned Judge was facilitating physical hearing alone. When the matter was listed on 29.10.2021 both counsels were directed to appear for enquiry but the learned counsel engaged in other Court hence he is not able to attend the Court proceedings on that date. Hence, the petition was dismissed as no representation on the side of the judgment debtor. Further, due to covid pandemic the Advocate clerks are not able to see the A diary. Thereafter, he came to know that petition was already dismissed hence to restore the same but there is a delay, to condone the delay of 263 days the petitioner filed the petitions before the Court. Further if the opportunity is not given to the petitioners, if any, excess extent of property was delivered to the decree holder, their physical right will be denied but the Court below erroneously dismissed the said petitions stating that the petitioners non appearance is wilful and wanton as such is erroneous and liable to be set aside. Hence, he prays to allow this petition.



CRP. No.2008 of 2023

WEB COPY

4. On perusal of records, it reveals that I.A No. 1 & 2 of 2022 was filed by these petitioners to restore E.A No. 3178 of 2016 and to condone the delay of 263 days in restoring the E.A No. 3178 of 2016. The contention of the petitioners/judgment debtor is that the Court amen along decree holder executed wrong warrant which was no way connected with door no. 48-A, New Door No. 112-A, Kodambakkam High Road, T. Nagar, Chennai – 17, presently No. 132, Kodambakkam High Road, Chennai – 600 034 comprised in R.S No. 628 measuring 432 square feet bounded on the: North by: R.S No. 627, south by: Door No.112 and passage leads to Kodambakkam High Road, East by : Sambandraman's land, West by: Door No. 112, New No. 132. in spite of their objection warrant was executed, in fact, schedule B portion in the premise of Old Door No. 48 -A new Door No. 112-A an extent of 432 square feet with four boundaries alone is to be executed. But they vacated the entire house measuring an extent of 1204 square feet comprised in survey No. 627 total extent of 2284 square feet land therefore he filed application for redelivery of possession after deduction 432 square feet, particularly as mentioned in the B Schedule.



CRP. No.2008 of 2023

Admittedly, the petitioner filed the said petition in the year 2016 and that application was posted for enquiry and the matter was posted on 29.10.2021 during that there was Covid outbreak hence the Court was running through hybrid mode both physical and virtual hearings were conducted. As per the contention of the both the parties on that date the case was physically heard but due to the absence on the side of the revision petitioner the said application was dismissed for default. But decree holder/respondent was present on that date. The learned judge held that reason assigned by the petitioner is not genuine but the counsel on other side was appeared on that date. In fact, on 29.09.2021 there was lot of restrictions due to the Covid outbreak and the Court also conducted through hybrid mode hence the reason assigned by the petitioner is justifiable and the Court ought to have adjourned the case but failed to do so. If the opportunity is given to the petitioners their valuable right to protect his property will be defeated. In view of the above the order passed by the Trial court in E.A. No. 1 & 2 of 2022 in E.A No. 3178 of 2016 in EP No. 1586 of 2010 is hereby set aside. Accordingly, I.A No. 1 and 2 of 202 in E.A No. 3178 of 2016 in EP No. 1586 of 2010 is allowed. Further, the Trial Court is directed to dispose E.A No. 3178 of 2016 in E.P No. 1586 of 2010 within a period of three months



CRP. No.2008 of 2023

from the date of receipt of a copy of this order.

WEB COPY 5. In result, this Civil Revision petition is allowed. No cost.

Consequently connected miscellaneous petition is closed.

06.11.2023

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To
The X Assistant City Civil Court, Chennai.



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CRP. No.2008 of 2023

T.V.THAMILSELVI,J.

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CRP. Nos.2008 & 2025 of 2023
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