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C.R.P.(NPD)No.3067 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.3067 of 2019

R.Kandasamy

.. Petitioner

vs.

A.George Xavier (died)

1.Nirmala Mary,

2.G.Anitha

3.G.Prakash

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the Order dated 19.06.2019 passed in E.A.No.767 of 2017 in E.P.No.212 of 2015 in O.S.No.114 of 2003 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.V.Srinivasan

For Respondents : Mr.G.Prabhakaran



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ORDER

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This revision arises against an order passed in E.A.No.767 of 2017 in E.P.No.212 of 2015 in O.S.No.114 of 2003 on the file of the II Additional Subordinate Judge, Coimbatore. O.S.No.114 of 2003 was a suit filed for recovery of money on the promissory note. The said suit was decreed by way of a judgment and decree on 29.07.2004.

2.Subsequently, two Execution Petitions were filed and dismissed for default. This revision arises against the third Execution Petition filed in E.P.No.212 of 2015. The said Execution Petition was dismissed for default and therefore, to restore the same together with condonation of delay, E.A.No.123 of 2017 was filed. The said E.A.No.123 of 2017 was allowed by an order of the Court dated 13.09.2017.

3.Subsequently, E.A.No.767 of 2017 was taken on file and notice was issued to the judgment debtors. After receiving a counter from the judgment debtors, the learned Subordinate Judge went on to dismiss the E.P. on the ground that there is no provision in the Code of Civil Procedure for the purpose of condoning the delay under Order 21 Rule 106 of CPC. Since the Court below came to the conclusion, there is no provision to condone the delay, the restoration application was dismissed

4.Heard Mr.V.Srinivasan, learned counsel appearing for the



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petitioner/decree holder and Mr.K.Prabhakaran, learned counsel appearing for the respondents/judgment debtors.

5.Mr.V.Srinivasan, learned counsel for the petitioner would bring to my notice that the learned Judge had not seen the provision under Order 21 Rule 106 as amended in Tamil Nadu. By the said amendment, Order 21 Rule 106 was amended permitting an application to be filed after the period of 30 days from the date of either dismissal of the Execution Petition or setting the judgment debtors exparte.

6.In so far as Tamil Nadu is concerned, the amendment made to Order 21 Rule 106 of CPC alone will govern. The learned II Additional Subordinate Judge, Coimbatore had not taken note of the fact that Civil Procedure Code has undergone an amendment and had followed the un-amended provision, which is applicable to the other parts of the country and had dismissed the application holding that there is no power vested in the Executing Court to restore the E.P., dismissed for default or to set aside the exparte order passed by the Executing Court against the judgment debtors.

7.The failure to take note of the amendment of the Code has resulted in an error and also caused injustice to the party as a person, who obtained a decree in the year 2004 and the judgment creditor is still



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suffering to execute the same. Apart from that, it is pertinent to point out that the predecessor of the learned Executing Court had already condoned the delay in E.A.No.123 of 2017. Therefore, the question of the Executing Court going beyond the order in E.A.No.123 of 2017 does not arise.

8.In fine, the Executing Court has acted beyond the jurisdiction and has also failed to read the applicable law. Therefore, it requires interference in the hands of this Court. Accordingly, the Civil Revision Petition is accepted and the order passed by the learned II Additional Subordinate Judge, Coimbatore in E.A.No.767 of 2017, dated 19.06.2019 is set aside. The E.P. is restored on to the file of the II Additional Subordinate Judge, Coimbatore, who shall proceed with the same with all expedition that is necessary. This Civil Revision Petition is allowed. No costs.

21.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

rjr/vs

To

The II Additional Subordinate Judge,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

rjr/vs

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