



WEB COPY



CRP. No. 4549 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

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

CRP No. 4549 & 4551 of 2023
and CMP No. 27233 of 2023

P.Rajendran

...Petitioner in both petitions

Vs.

D.Parasarathy

....Respondent in both petitions

PRAYER in CRP No. 4549 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 20.06.2023 passed in E.A No. 1 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019 on the file of the XXVI Assistant Judge, City Civil Court at Chennai by allowing the E.A No. 1 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019.

PRAYER in CRP No. 4551 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 20.06.2023 passed in E.A No. 2 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019 on the file of the XXVI Assistant Judge, City Civil Court at Chennai by allowing the E.A No. 2 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019.



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For Petitioner : Mr.P.N.George Graham
(in both petitions)

For Respondent: Mr.C.Umashankar
(in both petitions)

COMMON ORDER

These petitions have been filed to set aside the order and decreetal order dated 20.06.2023 passed in E.A No. 1 and 2 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019 on the file of the XXVI Assistant Judge, City Civil Court at Chennai.

2. The petitioner herein filed E.A No. 1 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019, to condone the delay of 63 days to set aside the exparte decree order dated 28.10.2021 and permit her to contest the case on merits and also filed another E.A No.2 of 2022 in E.P No. 2183 of 2020 in O.S No. 2203 of 2019 to set aside the exparte order dated 28.10.2021 passed in the E.P No. 2183 of 2020. On considering the submissions on either side, the Trial Court dismissed said applications. Challenging the same the petitioner filed these Civil Revision Petitions.



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3. The learned counsel for the petitioner submits that the respondent filed execution petition based on the exparte decree passed dated 25.10.2019. But the respondent issued notice to his mother's address, since she is uneducated and who do not know even to put her signature received the notice on compulsion by the person who served it. Thereafter, the petitioner engaged counsel who filed his vakalath on 09.06.2022 in S.R No. 27809/2022. At the time when the case was called he sought time for filing counter and informed about filing of vakalath by his counsel but the Court below without considering the petitioner's request attachment was made absolute on 17.06.2022. Thereafter, the petitioner came to know about the exparte decree passed during the period of Covid pandemic. Further, the petitioner came to know about the exparte order and order of attachment only on 17.06.2022 and also the schedule of property attached in the order was not belongs to the petitioner and the said property was settled on 03.10.2017. Hence, the petitioner prays to allow this petition.

4. By way of reply, the learned counsel for the respondent submits that to defraud the claim of the plaintiff's the petitioner clandestinely executed settlement deed in favour of his wife therefore he has no title in the suit claim all these can be decided only in execution proceedings.



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5. As per the contention of the petitioner he came to know about the exaparte order after receiving notice for the execution proceedings.

Therefore, this Court is inclined to allow these petitions with the condition to deposit a sum of Rs.8,00,000/- in the suit, on such deposit, the Trial Court is directed to condone the delay of 63 days and the petitioner is entitle to proceed with execution petition.

6. In the result, this Civil Revision petitions are disposed of. No Costs. Consequentially, connected miscellaneous petitions are closed.

18.12.2023

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To

The XXVI Assistant Judge, City Civil Court at Chennai.



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T.V.THAMILSELVI,J.

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