



C.R.P.No.4294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

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

C.R.P.No.4294 of 2023

and

C.M.P.No.26158 of 2023

Venkatesan

... Petitioner

-Vs-

1.G.Sankar

2.Anitha Sankar

K.Ganesan (deceased)

3.Kasthuri

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed by the Hon'ble XXVI Assistant Judge, City Civil Court, Chennai in E.A. No.3 of 2022 in E.P. No.1323 of 2019 in OS No.10167 of 2010 dated 25.07.2023.

For Petitioner

: Mr.D.Prasanna



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ORDER

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Challenging the fair and decreetal order passed by the learned XXVI Assistant Judge, City Civil Court, Chennai in E.A.No.3 of 2022 in E.P.No.1323 of 2019 in O.S.No.10167 of 2010, dated 25.07.2023, the Revision Petitioner/3rd judgment debtor preferred this Civil Revision Petition.

2. Since the relief sought against the order passed by the Executing Court, notice to the respondents is dispensed with.

3. Before the Executing Court, the Revision Petitioner herein is the 3rd Judgment Debtor in E.P.No.1323 of 2019 in O.S.No.10167 of 2010. Based on the decree obtained in the said suit, the respondents/decreed holders have initiated the execution proceedings to execute the same, in which he is a 3rd Judgment debtor and he is having valid defence. However, he did not appear on the date of hearing due to his illness, thereby, an ex-parte order was passed against him. Thereafter, he filed application in E.A.2 of 2022, to set aside ex-parte order passed against him along with an application to condone the delay of 35 days. The same was objected by the



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decree holder stating that in order to drag on the proceedings, the Revision Petitioner filed the said application. Considering both side submissions, the learned trial Judge dismissed the said application for the reason that the delay has not been properly explained. Challenging the said findings, the Revision Petitioner preferred this Civil Revision Petition.

3. The learned counsel for the Revision Petitioner submitted that the delay was neither willful and nor wanton, but the learned trial Judge has erroneously concluded that to drag on the proceedings he has filed the application. Accordingly, he prayed to set aside the findings of trial judge.

4. On a perusal of records, it is seen that there was a delay of only 35 days in filing an application to set aside the ex-parte order of arrest made in the execution proceedings. After the ex-parte order, immediately he filed his objection within a period of 5 weeks. However, if an opportunity is not given to him, his valuable right will be defeated. But, without considering his submissions, the Executing Court dismissed the said application, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings



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rendered by the learned trial Judge in E.A.No.2 of 2022 in E.P.No.1323 of 2019 in O.S.No.10167 of 2010 is set aside and the E.A.No. 2 of 2022 is ordered to be allowed. The revision petitioner is directed to file his counter objection before the Executing Court. However, the learned trial Judge is directed to complete the trial and dispose of the case within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
rpp

To

The XXVI Assistant Judge, City Civil Court, Chennai



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T.V.THAMILSELVI, J.

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