



C.R.P. No.3968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3968 of 2023

and

CMP.No.24365 of 2023

Venkatesan

... Petitioner

Versus

1.G.Sankar

2.Anitha Sankar

K.Ganesan (deceased)

3.Kasthuri

4.Yogeswari

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed by the learned XXVI Assistant Judge, City Civil Court, Chennai in E.A.No.2 of 2022 in E.P.No.1323 of 2019 in O.S.No.10167 of 2010, dated 25.07.2023.

For Petitioner : Mr. D. Prasanna



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ORDER

WEB COPY The petitioners have filed this petition to set aside the fair and decreetal order passed by the learned XXVI Assistant Judge, City Civil Court, Chennai in E.A.No.2 of 2022 in E.P.No.1323 of 2019 in O.S.No.10167 of 2010, dated 25.07.2023.

2. 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 respondent / decree holder has filed E.P. to execute the same, in which the 3rd defendant is having valid defence. He did not appear due to his illness, due to which, 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, with a delay of 35 days. The same was objected to by the decree holder stating that in order to drag on the proceedings, the 3rd Judgment Debtor/petitioner has filed this application. Considering both side submissions, the learned trial Judge dismissed the said application stating that the reason for delay has not been properly assigned.



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3. The learned counsel for the 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.

4. On a perusal of records, it is seen that there was a delay of only 35 days to file an application to set aside the ex-parte order of arrest made in the execution proceedings. After the ex-parte order, immediately he filed objection within a period of 5 weeks. Therefore, if an opportunity is not given to him, his valuable right will be defeated.

5. Therefore, the findings given 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, dated 25.07.2023, is hereby 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 dispose of the case within a period of 6 weeks from the date of this order.



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T.V.THAMILSELVI, J.
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6. Accordingly, this Civil Revision Petition is disposed of.
Consequently, connected miscellaneous petition is closed. No costs.

09.11.2023

Index : Yes / No
Neutral Citation: Yes / No
Speaking/Non-speaking order

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1. The XXVI Assistant Judge, City Civil Court, Chennai.
2. The Section Officer,
VR Section, High Court of Madras.

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