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CRP No. 4604 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2023

CORAM :

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

Civil Revision Petition No.4604 of 2023
and
CMP.No.27473 of 2023

1.S.Pushpa
2.Senthilkumar
3.Gomathi

... Petitioner

Versus

Devendran

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 17.03.2023 made in E.A.No.112 of 2022 in E.P.No.155 of 2013 in O.S.No.1292 of 2004 passed by the learned Additional Munsif, Vellore.

For Petitioners : Mr. N.Manokaran
for Mr.P.Krishnan

ORDER

The petitioners have filed this petition to set aside the fair and decretal order dated 17.03.2023 made in E.A.No.112 of 2022 in E.P.No.155 of 2013 in O.S.No.1292 of 2004 passed by the learned Additional Munsif, Vellore.



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2. Heard Mr. N.Manokaran, learned counsel for Mr.P.Krishnan learned

counsel for the petitioners and perused the materials available on record.

3. Before the Executing Court the petitioners have filed an application to condone the delay of 2773 days to set aside the ex-parte order passed under Order XXI Rule 105(3) & Section 151 of CPC, stating that originally decree was obtained, against which the husband of the 1st revision petitioner namely Dhamodharan died leaving behind his legal heirs / revision petitioners herein, but they were not aware of the suit proceedings as well as the execution proceedings. The petitioners have engaged their counsel in the Execution proceedings, but due to lack of communication they were not able to follow the proceedings, so they remained ex-parte on 20.11.2014. After, receipt of sale notice only they came to know about the ex-parte order. They have valid defence to contested the case, but due to lack of delay of 2773 days, the said application was dismissed by the learned trial Judge held that no proper reason was assigned. Challenging the same the revision has been preferred by the revision petitioners.

4. The learned counsel for the revision petitioners submitted that while filing of the suit, the plaintiff has claim recovery of money based on the



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promote in the year 2004, against the said Dhamodharan. The plaintiff obtained decree, thereafter, he filed E.P.No.155 of 2013, but before executing the decree, the original defendant Dhamodharan died and the legal heirs are added as the respondents in the EP proceedings. They were appeared through their counsels, but due to lack of communication they remained ex-parte. Now the EP is posted for sale proceedings of the property belongs to the Judgment Debtors. According to them suit property is a house property and it is the only property where they are residing, but from the year 2014 they remained ex-parte, as on date the suit claim comes around Rs.3,25,000/-, but as per the decree original claim is Rs.86,000/- but the Court below awarded @ 24% per annum, Since the defendant remained ex-parte.

5. Admittedly, all the revision petitioners are the legal heirs of the deceased Dhamodharan / Judgment Debtor, they are only having the house property, if it is attached and sold, they will be put to much hardship. However, there is a delay of 2773 days.

6. Considering the facts and circumstances, the revision petitioners are directed to deposit a sum of Rs.85,000/- to the credit of E.P.No.155 of 2013 in O.S.No.1292 of 2004 on the file of the Additional Munsif Court, Vellore,



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T.V.THAMILSELVI, J.

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within a period of 4 weeks from the date of receipt of a copy of this order. On such deposit the Executing proceedings is ordered to be stayed. Therefore, the findings rendered by the learned trial Judge in E.A.No.112 of 2022 in E.P.No.155 of 2013 in O.S.No.1292 of 2004 is set aside and liberty is granted to the revision petitioners to proceed with the EP as per manner known to law.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

08.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

1. The Additional Munsif, Vellore.
2. The Section Officer,
VR-Section, High Court of Madras.

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