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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP.No.21 of 2019
and C.M.P.No.282 of 2019

P.Karthikeyan

.. Petitioner

Vs

1.Subramanian Udayar (died)
2.Palaniappan
3.Malliga
4.Surendar
5.Suganya
6.Suganthi

... Respondents

(1st respondent died, respondents 3 to 6 are brought on record
as LRS of the deceased R1 vide Court order dated 30.08.2023)

PRAYER: Civil Revision Petition filed under Article 115 of the Code of Civil Procedure, against the fair and decreetal order dated 24.09.2018 made in E.A.No.277 of 2018 in E.A.No.450 of 2016 in E.P.No.197 of 2010 in O.S.No.175 of 2005 on the file of the Principal District Munsif Court, Vridhachalam.

For Petitioner : Mr.Santhanu for
Mr.T.L.Thirumalaisamy

For Respondents : Mr.T.Sezhiyan



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ORDER

The Civil Revision Petition arises against the application filed to condone the delay of 182 days in representing the petition filed to restore the claim petition.

2. The petitioner herein is a third party. The first respondent had filed O.S.No.175 of 2005 on the file of the Principal District Munsif Court, Vridhachalam, for recovery of money. The said suit was decreed. He put the said decree into execution in E.P.No.197 of 2010. The said execution is for attachment and sale.

3. Claiming to have a share in the property, the Civil Revision Petitioner filed E.A.No.450 of 2016. The claim petition was numbered and it was listed for evidence. During the course of enquiry, the petitioner also filed his proof affidavit and the matter was adjourned for cross examination. Since he was sick on the date on which the matter was posted for cross examination i.e., on 03.07.2017, he was unable to attend the Court. Consequently, E.A.No.450 of 2016 was dismissed for default. Immediately, he filed the restore petition under Order 21 Rule 106 of CPC. The said



restore petition was returned on 12.09.2017 with granting 7 days time to correct the errors and represent the same. However, the petitioner did not represent the same within time and the said application was represented only on 19.03.2018. Consequently, there was a delay of 182 days in representing the papers. In order to condone the delay in representation, he filed E.A.No.277 of 2018.

4. This was strictly opposed by the decree holder stating that the entire exercise is only to drag on the proceeding and to deny the fruits of the decree. Taking note of this objection, the learned Principal District Munsif, Vridhachalam, dismissed the application to condone the delay in representation.

5. It is against the said order, the present Civil Revision Petition has been filed.

6. The narration of the facts goes to show that the execution petition was filed for sale of the property and as the son of the judgment debtor, a claim petition has been filed. To the said claim petition, a counter has been filed and the matter has also been posted for cross examination of the



claimant. The fact that the sale certificate has been issued and the auction purchaser himself was the decree holder are all matters, which could have been gone into at the time of decision of the claim petition. To dismiss the condone delay petition, despite the fact, the third party/claimant has pleaded that he is not feeling well, is slightly harsh on the party.

7. Taking into consideration, it is only condone delay in representation, I am inclined to condone the delay on the payment of Rs.5,000/- (Rupees Five Thousand only) by the claimant to the decree holder. On such payment, E.A.No.277 of 2018 will stand allowed. Thereafter, the trial Court shall take up the application to restore E.A.No.450 of 2016 and allow the same on payment of similar costs i.e., another sum of Rs.5,000/- (Rupees Five Thousand only). In all, the Civil Revision Petitioner will pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the decree holder to condone the delay in representation as well as to restore E.A.No.450 of 2016. On proof of payment of both, the trial Court shall take up E.A.No.450 of 2016 and dispose of the same within three months from the date of its restoration.



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8. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

25.09.2023

Index: Yes/No
Speaking order/Non-speaking order
vkr

To :

The Principal District Munsif, Vridhachalam.



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V.LAKSHMINARAYANAN,J.,

vkf

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