



CRP(MD).No.422 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No. 422 of 2023

and

C.M.P(MD).No.2056 of 2023

Singadurai

... Petitioner/Petitioner/Respondent/ Defendant

Vs.

1.V.K.Palanirajan @ Radha

2.V.S.Chokkalingampillai (deceased)

3.Subbaih Pillai

... Respondent/Respondent/Petitioner/Plaintiff

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.12.2022 in E.A.No.73 of 2017 in E.P.No.12 of 2016 in O.S.No.193 of 2010 on the file of the Principal District Munsif Court, Sivagiri, by allowing the civil revision petition.

For Petitioners : Mr.SV.Shanmugarajan

For Respondents : Mr.F.X.Eugene (for R1)

ORDER

The present revision petition has been filed by the judgment-debtor challenging an order refusing to entertain an application to set aside the *ex-parte* order in the execution proceedings on the ground of delay.



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2. The revision petitioner has suffered a decree for recovery of possession and the decree-holder has filed E.P.No.12 of 2016 to execute the said decree. In the said execution proceedings, the judgment-debtor remained *ex-parte* and he filed an application in E.A.No.73 of 2017 under Order 21 Rule 106 of the Code of Civil Procedure to set aside the said *ex-parte* order. The said application was dismissed by the trial Court on the ground that in view of Order 21 Rule 106(3), the delay could be condoned only if it is within a period of 30 days. In the present case, the delay being beyond 30 days, this Court has no power to condone the delay. On the said ground, E.A.No.73 of 2017 was dismissed. Challenging the same, the present revision petition has been filed.

3. The learned counsel appearing for the petitioner/defendant had contended that the trial Court has not considered the proviso to Order 21 Rule 105(3), which was introduced by way of Madras High Court Amendment dated 01.11.1972, which empowers the Court to condone the delay even beyond the period of 30 days, if proper reason has been made out.



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4. Per contra, the learned counsel appearing for the decree-holder had contended that the revision petitioner has not challenged the decree for recovery of possession in the manner known to law. In such view of the matter, no purpose would be served in allowing the application to set aside *ex-parte* order in the execution proceedings.

5. I have carefully considered the submissions made on either side.

6. The application to set aside *ex-parte* order in the execution proceedings has been dismissed by the Court below only on the ground that the delay is beyond a period of 30 days and it cannot be condoned in view of Order 21 Rule 106(3) of the Code of Civil Procedure. In view of the judgment of our High Court reported in **2011 (6) CTC 268 (N.Rajendran Vs., Shirram Chits Tamil Nadu Pvt. Ltd., rep., by its Branch Manager/Foreman)**, there is an amendment to Order 21 Rule 105(3) by introducing a proviso, which empowers the Court to condone the delay even beyond the period of 30 days, when sufficient cause has been made out.



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7. In view of the aforesaid judgment, the order passed by the trial Court in E.A.No.73 of 2017 in E.P.No.12 of 2016 is hereby set aside and remitted back to the Principal District Munsif Court, Sivagiri, for fresh consideration of the application on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

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

27.02.2023

Index : Yes / No
Internet : Yes / No
Rmk

To
The Principal District Munsif, Sivagiri .



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R.VIJAYAKUMAR ,J.,

Rmk

Order made in
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