



C.R.P.(MD)No.2864 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.2864 of 2023

and

C.M.P(MD)No.14916 of 2023

S.Godwin

: Petitioner/Petitioner/
2nd Judgment Debtor/2nd Defendant

Vs.

1.S.Punitha

: 1st Respondent/2nd Respondent/
1st Judgment Debtor/1st Defendant

2.S.Babu

: 2nd Respondent/1st Respondent/
Decree Holder/Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.06.2023 passed in unnumbered E.A.S.R.No.869 of 2022 in E.P.No.48 of 2019 in O.S.No.71 of 2014 on the file of the Additional District Court (Fast Track Court), Kanyakumari District at Nagercoil and direct the lower court to number the case and take it on file and decide the same on merits.



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For Petitioner : Mr.R.J.Karthick

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ORDER

The Civil Revision Petition is directed against the order of return, dated 09.06.2023, returning the execution application filed under Section 5 of Limitation Act.

2. The learned Additional District Judge has returned the petition with the following endorsement :

“Section 5 of the Limitation Act itself it is very clearly stated that the said provision is applicable other than application under any of the provisions of Order XXI of the Code of Civil Procedure. As such the explanation of the petitioner to maintain this petition cannot be accepted. Hence returned.”

3. As rightly contended by the learned counsel for the petitioner, this Court, in catena of decisions, by following the judgment of the Hon'ble Mr.Justice.V.Ramasubramanian, reported in **2011 (6) CTC 268**, **[N.Rajendran Vs. Shriram Chits Tamil Nadu Pvt., Ltd.,]** has specifically



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held that an application to condone the delay in execution proceedings is maintainable and the relevant passages in N.Rajendran's case are extracted hereunder :

“42.Act of 2002 contained a provision for repeal and savings under Section 16, Section 16(1) was in part materia with Section 331(1) of Act 46 of 1999, both of which were identical to Section 92(2) of Act 104 of 1976. Therefore, What should be taken to have been repealed would be those inconsistent with the amendments introduced. There is nothing on record to show that the Proviso to Sub-rule of Rule 105, which would now become the Proviso to subrule (3) of Rule 106 of Order 21, is in any way, inconsistent with the amendments introduced either in 1976 or in 1999 or even in 2002. So long as the Proviso under sub-rule(3) is not shown to be inconsistent with any of the amendments, it cannot be stated to have been repealed under the Central Amendment Acts.

43.Therefore, I am of the view that the order of the Court below, refusing to entertain the Application on the ground that it was filed beyond 30 days and that there was no power to entertain the same, is not in accordance with law. Hence, the impugned order of the Court below is set aside and the Court below is directed to number the Application and take it up for hearing.” .

4. No doubt, the petitioner has laid the above application under Section 5 of the Limitation Act. But it is settled law that mere quoting a



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wrong provision of law does not disentitle the applicant from claiming the relief.

5. Considering the above, the impugned order, returning the petition, is not proper and in accordance with law. Hence, the revision petitioner is directed to represent the petition and on such representation, the Additional District Court (Fast Track Court), Kanyakumari District at Nagercoil, is directed to take the petition on file, if it is otherwise in order and proceed in accordance with law.

6. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.11.2023

Note :The Registry is directed to return the original petition, filed along with this revision to the learned counsel for the revision petitioner, retaining a copy of the same.

NCC :yes/No
Index :yes/No
Internet :yes/No
das



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To
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- 1.The Additional District Court (Fast Track Court),
Kanyakumari District at Nagercoil.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in

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and

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