



CRP(MD).No.497 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No.497 of 2023
and
C.M.P(MD).No.2399 of 2023

1.Sankal Beevi
2.Sheik Mohaideen Ali
3.Amjath Khan

.. Petitioners/Petitioners/Judgment debtors/defendants 1 to 3

Vs.

1.T.Rajapandian

..1st Respondent/Respondent/decreed holder/Plaintiff

2.Feroz Khan

.. 2nd Respondents/4th Petitioner/judgment debtor/4th Defendant

PRAYER : Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order of the learned Subordinate Judge, Sankarankovil made in E.A.No.1 of 2021 in E.P.No.22 of 2019 in O.S.No.13 of 2016 on the file of the Subordinate Court, Sankarankovil forthwith.

For Petitioner : Mr.S.Palani Velayutham



CRP(MD).No.497 of 2023

ORDER

The present revision petition has been filed by the judgment-debtors challenging an order of dismissal of an application under Order 21 Rule 106 of the Code of Civil Procedure. The said application was filed to set aside the *ex-parte* order as against the defendants 1, 3 and 4 dated 18.01.2021 and as against the second defendant dated 10.08.2021. The learned trial Judge has proceeded to dismiss the said application. Challenging the same, the present revision petition has been filed.

2. The defendants had suffered an *ex-parte* decree in a suit for declaration of title and recovery of possession. According to the learned counsel appearing for the revision petitioners, an application in I.A.No.2 of 2022 has been filed to condone the delay in filing an application under Order 9 Rule 13 of the Code of Civil Procedure. Since the said application is pending, if the trial Court proceeds with E.P.No.22 of 2019, he will be put to great hardship.

3. I have considered the submissions of the learned counsel appearing for the petitioners.



4. It could be seen from the records that the petitioners have suffered an *ex-parte* decree in a suit for declaration of title and recovery of possession. Pursuant to which, E.P.No.22 of 2019 was filed by decree-holder for taking delivery. An order of delivery has been passed on 10.08.2021, in view of the fact that the judgment-debtors have remained *ex-parte*. Thereafter, the present application has been filed to set aside the *ex-parte* order. The Executing Court has dismissed the said application on the ground that it has been filed beyond a period of 30 days and the judgment-debtors had not appeared despite proper service of summons. This order is under challenge before this Court.

5. Considering the fact that the petitioners have remained *ex-parte* even during trial as well as during execution proceeding, this Court is not inclined to agree with any one of the submissions of the learned counsel appearing for the petitioners. However, the learned counsel appearing for the petitioners submitted that they have filed an application in I.A.No.2 of 2022 to condone the delay in filing an application to set aside the *ex-parte* decree. The learned trial Judge is directed to dispose of the said application within a period of 10 days from the date of receipt of a copy of this order and thereafter, proceed with the execution proceedings.



CRP(MD).No.497 of 2023

WEB COPY

6. With the above observation, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2023

Index : Yes / No
Internet : Yes / No
Rmk

To
The Subordinate Judge, Sankarankovil.



WEB COPY



CRP(MD).No.497 of 2023

R.VIJAYAKUMAR ,J.,

Rmk

Order made in
CRP(MD).No.497 of 2023

Dated:
28.02.2023