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C.R.P.(NPD).No.1641 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.1641 of 2024 &
CMP.No.8713 of 2024

Barani

... Petitioner

-Versus-

Bathma (Died)

Rajalakshmi

... Respondent

Civil Revision Petition under Section 115 of the Code of Civil Procedure to set aside the order dated 30.01.2024 in I.A.No.4 of 2023 made in O.S.No.217 of 2019 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.Aditya Chandramouli

ORDER

This civil revision petition arises against the order in I.A.No.4 of 2023 in O.S.No.217 of 2019 on the file of the Principal District Judge, Villupuram.

2. O.S.No.217 of 2019 is the suit for specific performance of an agreement of sale. This suit ended in an exparte decree. To condone the delay in filing an application to set aside the exparte decree, an application came to



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be filed in I.A.No.2 of 2022.

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3. The gravamen of the case of the defendant is that no summons were served on the defendant and an exparte decree was obtained in collusion with the process server. The same procedure had been followed in the execution proceeding, and therefore, the defendant stated that the exparte decree, having been passed behind this back, has to be set aside.

4. The learned judge, taking into consideration the allegations made by the defendant, condoned the delay in filing an application to set aside the exparte decree. This order was passed on 16.02.2023. The challenge to the said order has also attained finality. The consequential order has been passed under Order IX Rule 13 of the Code of Civil Procedure.

5. The learned counsel for the petitioner would submit that the findings made in the interlocutory application would prejudice his case in the suit. In the impugned order, the learned judge has specifically stated that whether the decree had been obtained in a proper manner or whether the decree had been fraudulently obtained will be decided at the time of trial. Therefore, she has not



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come to a conclusion which would prejudice the case of the civil revision petitioner. All that she has done is set aside the exparte decree and restore the suit to her file. The plaintiff cannot be said to be a person who is aggrieved by such an order.

6. The learned counsel for the petitioner would state that his client should be permitted to participate in the enquiry that is initiated against the process server. The process server is a servant of the court and any complaint lodged against him has to be dealt as a departmental enquiry. It is not an adversarial proceeding, but it is a departmental proceeding. In such a proceeding, the third party does not have any rights at all.

7. In the light of the above, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.04.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

WEB C The Principal District Judge, Villupuram.



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V.LAKSHMINARAYANAN, J.

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