



C.R.P.No.2888 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2024

Coram

The Hon'ble Mr.Justice N.Sathish Kumar

C.R.P.No.2888 of 2024

M.Baskaran

...Revision Petitioner

Vs.

1. A.K.Murugesan

2. P.Rathinam

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking to aside the order passed by the learned Subordinate Judge, Rasipuram, in C.M.A.Sr.No.10855 of 2024 dated 12.01.2024.

For Revision Petitioner : Mr.K.Sathish Kumar

For Respondent -1 : Mr.J.Prithivi

Respondent-2 : No appearance

ORDER

This Civil Revision Petition is filed seeking to aside the order passed by the learned Subordinate Judge, Rasipuram (hereinafter referred to as the Trial Court) in C.M.A.Sr.No.10855 of 2024 dated 12.01.2024.

2. The brief facts of the case is as follows:-

i) A suit in O.S.No.475 of 2002 has been filed by the revision

petitioner/plaintiff seeking for recovery of a sum of Rs.64,866/- on the basis of a Promissory Note. The said Suit was decreed ex parte on 07.10.2002. To



C.R.P.No.2888 of 2024

put the decree into execution, the revision petitioner filed a Petition in E.P.No.37 of 2005, and the said Petition was allowed, whereby, the property of the second respondent/judgment debtor was attached, brought for sale and the revision petitioner/decreed holder himself appears to have purchased the suit mentioned property and delivery also effected. At this juncture, an Application in R.E.A.No.107 of 2008, has been taken out by a third party, named Murugesan, the first respondent herein challenging the execution proceedings by contending that he has already filed a suit in O.S.No.1544 of 2002 to enforce registration of the sale agreement and such suit has been decreed in his favour on 26.03.2006, pursuant to which, sale deed was also executed in his name. The said R.E.A.No.107 of 2008 was allowed. As against which, the revision petitioner has filed an Appeal seeking to set aside the order passed in R.E.A.No.107 of 2008. The said Appeal came to be dismissed. Aggrieved against the same, the revision petitioner/decreed holder in O.S.No.475 of 2002 has filed the present Civil Revision Petition.

3. Mr.K.Sathish Kumar, learned counsel for the revision petitioner would submit that the Counsel engaged by the revision petitioner to contest the Execution Petition has failed to inform him about the outcome of the Petition and further proceedings initiated by the first respondent in R.E.A.No.107 of 2008, and that the revision petitioner came to know about the order passed in R.E.A.No.107 of 2008 dated 19.07.2012, only on 28.04.2022 immediately thereafter, he has filed Appeal against the said



C.R.P.No.2888 of 2024

order, therefore, the delay in filing the Appeal is neither wilful nor wanton, but, owing to genuine reasons, as stated above, whereas, the Trial Court without considering the fact that the delay is not deliberate, dismissed the Appeal as not maintainable. Hence, learned counsel for the revision petitioner prays for allowing the Civil Revision Petition.

4. Mr.J.Prithivi, the learned counsel for the first respondent would submit that the impugned order passed by the Trial Court in rejecting the Appeal at the threshold is sustainable and the same requires no interference.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and perused the records. Though notice was served on the second respondent, either the second respondent nor any other counsel has entered appearance on his behalf. Therefore, the second respondent is set ex parte.

6. It is no doubt true in a suit filed by the revision petitioner, he has obtained a decree and he, being a decree holder also filed an Execution Petition, which was also allowed in his favour. However, an Obstruction Application was filed by a third party, viz., Murugesan, who is the first respondent herein, in R.E.A.No.107 of 2008 in R.E.P.No.37 of 2005. The Trial Court considering the fact that the first respondent has also filed a suit



C.R.P.No.2888 of 2024

in O.S.No.1544 of 2002 to enforce registration of the sale agreement and such suit has been decreed in his favour on 26.03.2006, pursuant to which, sale deed was already executed in his name, allowed the said Obstruction Application.

6.1 Thus, the proper recourse available to the revision petitioner is to challenge the decree passed in O.S.No.1544 of 2002 by way of filing regular appeal rather than filing Appeal against the order passed in R.E.A.No.107 of 2008. It is relevant to be noted that application filed under Order XX1 Rules 97, 98 and 100 has to be adjudicated in a proper manner by the Court below, and after such adjudication, if any order is passed, determining the rights of the parties, the same has some force in it, be it were in Appeal or Decree, as against such order, only Regular Appeal is maintainable. As such, I do not find any merits in the Revision Petition. Accordingly, the same is liable to be dismissed. It is upto the revision petitioner to file regular Appeal in the manner known to law.

7. This Civil Revision Petition is dismissed. No costs.

13.11.2024



C,R.P.No.2888 of 2024

To

The Subordinate Judge, Rasipuram,

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N.Sathish Kumar,J.



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C.R.P.No.2888 of 2024

C.R.P.No.2888 of 2024

13.11.2024