



C.R.P.No.2546 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2546 of 2024

Tamilselvi ... Petitioner

-Vs-

Purushothaman ... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to direct the trial Court to number the unnumbered interlocutory application in IA.SR.No.230 of 2024 in OS No.131 of 2015 filed by the revision petitioner dated 08.04.2024 on the file of the Subordinate Judge, Gingee by allowing this CRP.

For Petitioner : Mr.C.Munusamy

ORDER

This civil revision petition has been filed for a direction to the trial Court to number I.A.SR.No.230 of 2024 in O.S.No.131 of 2015.

2. O.S.No.131 of 2015 is a suit for specific performance of an agreement of sale dated 22.01.2014. In the said suit, an exparte decree was passed on 24.07.2018. To set aside the same and to condone the delay, an application was filed in I.A.SR.No.230 of 2024. On 08.04.2024, the learned Subordinate Judge at Gingee on his return of papers, made the following endorsement:



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"Returned

Dated : 30.04.2024

இவ்வழக்கு இந்நீதிமன்றத்தில் E.P.78/2022 ஆக கோப்பிற்கு

எடுக்கப்பட்டு 13.02.2024 அன்று property delivery on 24.01.2024.

No objection filed. E.P. proceeding closed என்று

முடிக்கப்பட்டுள்ளது,

எனவே திருப்பப்படுகின்றது.

காலம் 20 நாட்கள்"

3. The reason for the return is that the decree holder has already executed the decree and therefore the said petition is not maintainable. The fact that the decree is executed does not mean the defendant is not entitled to move an application to condone the delay and set aside the exparte decree. For the purpose of condonation of delay, the Court has to see whether the defendant has made out any sufficient cause or not to file an application under Order IX Rule 13. The fact that the decree has been executed is no more a reason to return the application for condonation of delay and to set aside the exparte decree.

4. Consequently, the Civil Revision Petition stands allowed. The endorsement made on 30.04.2024 by the learned Subordinate Judge, Gingee is set aside. The learned Judge is directed to number the application, issue notice and receive



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counter from the plaintiff / respondent and dispose of the application in accordance with law. No costs.

19.07.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

Note to Registry: The petition filed to set aside the ex parte decree in IA SR.No.230 of 2024 may be returned to the learned counsel for the petitioner after obtaining the usual endorsement.

To

The Subordinate Judge
Gingee.



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V. LAKSHMINARAYANAN, J.

KST

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