



C.R.P.No.2309 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2309 of 2023
and C.M.P.No.14046 of 2023

1. Hasina Begum (Died)
2. Thahira Naseeruddin
(Sole petitioner died. Petitioner-2
brought on record as the LR of the
deceased sole petitioner vide court
order dated 23.08.2024 made in
CMP Nos.15367 & 15368 of 2024
in CRP No.2309 of 2023 by VLNJ)

... Petitioners

-Vs-

- 1.Mohammed Naseeruddin
- 2.S.Zareena Begum
- 3.S.Shaik Madaar
- 4.S.Mohammed Razak
- 5.S.Shaheen Begum
- 6.S.Shakila Begum
- 7.S.Nasreen Banu
- 8.S.Mujibur Rahaman
(Respondents 2 to 8 brought on record as
LRs of the deceased sole petitioner viz.,
Hasina Begum vide court order dated
23.08.2024 made in CMP Nos.15367
& 15368 of 2024 in CRP No.2309
of 2023 by VLNJ)

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 22.06.2023 passed in IA No.2 of 2023 in EP No.107 of 2022 in OS No.141 of 2017 passed by the Additional Sub Court, Chengalpattu.



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For Petitioner : Ms.Shaikh Mehrunnisa Kasim
For Respondents : Mr.T.Arockia Dass
for M/s.Dass & Viswa Associates - for R1

ORDER

This civil revision petition is filed against the order of the learned Principal District Judge at Chengalpattu in I.A.No.2 of 2023 in E.P.No.107 of 2022 in O.S.No.141 of 2017.

2. O.S.No.141 of 2017 was presented by the first respondent herein. He sought for the relief of declaration and recovery of possession. After contest, the suit came to be decreed by the learned Subordinate Judge on 21.03.2022. In order to execute the decree, an application was filed in E.P.No.107 of 2022. In the said execution petition, the civil revision petitioner remained exparte and therefore she filed an application to condone the delay of 36 days to set aside the exparte order dated 01.12.2022. Though the provision referred to is Section 5 of the Limitation Act, the appropriate provision will be Order XXI Rule 106 of the CPC. The ground on which she wanted the delay to be condoned was that notice was not served on her in the Execution Petition. This application was taken on file as E.A.No.2 of 2023.

3. Notice was issued in the said application to the decree holder. He entered appearance and filed a detailed counter. According to him, the entire idea is only to delay the proceedings as the original judgment debtor is occupying the entire



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portion of the property to the exclusion of the decree holder.

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4. The learned trial Judge returned a finding that whenever summons was sent to the judgment debtor, it was returned as 'person not available'. Therefore, summons was affixed in the execution petition mentioned property. Proceeding further in the execution petition, the learned trial Judge ordered publication. Publication was also effected and still there was no appearance for the judgment debtor. Therefore, the judgment debtor was set exparte on 01.12.2022.

5. The learned Judge gave a specific finding that since the decree in O.S.No.141 of 2017 dated 21.03.2022 had not been stayed by the appellate court, the Court had decided to proceed further with the execution. Finding no reasons to condone the delay of 36 days, the learned Judge reached a conclusion that she did, against which the present civil revision petition.

6. Pending the revision, the judgment debtor passed away and her daughter has come on record stating that she is representing the estate of the deceased. By keeping the civil revision petition pending, it is only the judgment debtor who is going to continue in possession of the property. It is submitted that the judgment debtor has filed an appeal in A.S.No.40 of 2023 and the same is pending.

7. I have heard Ms.Mehrunnisa Kasim for the civil revision petitioner and



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Mr.T.Arockia Dass for the first respondent.

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8. Since the delay is only 36 days and all that the judgment debtor seeks for is to proceed with the execution petition, I am inclined to condone the delay of payment of Rs.5,000/- within a period of one week from today. On such payment, the delay of 36 days shall stand condoned. Learned Executing Court viz., Additional Subordinate Judge at Chengalpattu is requested to number the application under Order XXI Rule 106 of CPC and allow the same after hearing the judgment debtor and the decree holder and dispose of the execution petition on or before 27.09.2024. The learned executing Judge shall submit a report of compliance of the disposal of the execution petition to this Court on or before 30.09.2024. The Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

9. Since this Court has already brought on record the legal representative of the civil revision petitioner/ the judgment debtor, the decree holder has to file a memo before the executing Court bringing to its notice that in the revision preferred against the execution petition, the legal representative has already been brought on record and that it will enure in favour of the execution petition. The learned Executing Judge is requested not to grant unnecessary adjournments either to the decree holder or to the judgment debtor and ensure that the execution proceedings are completed within the date that has been fixed by this Court. In case the costs



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of Rs.5000/- is not paid within a period of one week, the benefit of this order will not enure to the civil revision petitioner / Thahira Naseeruddin, daughter of Hasina Begum.

10. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Additional Subordinate Judge
Chengalpattu.



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V. LAKSHMINARAYANAN, J.

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