



WEB COPY



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.3271 of 2024
& C.M.P.No.17510 of 2024

1.Kanaga
2.Meiyyalagan
3.Thenmozhi

... Petitioners

Vs.

N.Velmurugan

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decretal order dated 06.03.2024 passed in R.E.A. No.01 of 2023 in E.P.No.03 of 2023 in O.S.No.134 of 1997 on the file of District Munsif-cum-Judicial Magistrate, Edappadi.

For petitioners : Mr.T.S.Baskaran for
Mr.M.R.Vivekananthan

For Respondent : Mr.M.Santhana Raman

ORDER

Challenging the order passed by the learned District Munsif-cum-Judicial Magistrate, Edappadi, dated 06.03.2024 in R.E.A. No.1 of 2023



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

in E.P.No.03 of 2023 in O.S.No.134 of 1997, dismissing the application filed under Section 5 of Limitation Act seeking to condone the delay of 132 days in filing the petition to set aside the ex-parte order dated 17.04.2023 passed against the petitioners in R.E.P.No.3 of 2023, the present civil revision petition has been filed.

2.The petitioners are the judgment debtors and the respondent is the decree-holder. The respondent-decree holder had filed R.E.P.No.3 of 2023 to remove the alleged encroachments and to punish the judgment debtors for the contempt committed for violating the orders of the Court. The execution petition was posted on 17.04.2023 for appearance and counter of the judgment debtors. Since the judgment debtors did not appear before the Court, they were called absent and set ex-parte on the said date and the Court has passed an ex-parte order. The petitioners herein/judgment debtors contending that the first petitioner, who was following the Execution Petition, fell ill due to Jaundice and thereby, he had not appeared before the Court and had filed a petition in REA No.1 of 2023 in E.P.No.3 of 2023 to condone the delay of 132 days in filing the petition to set aside the ex-parte order dated 17.04.2023 passed against them in R.E.P.No.3 of 2023. The respondent/decree holder had



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

filed a counter contending that the petitioners have willfully evaded from appearing before the Court and the Court, finding that the petitioners have willfully evaded from appearing before the Court, dismissed the petition, against which, the present revision has been filed.

3.Learned counsel for the petitioner would submit that the first petitioner was following the execution proceedings and when the Execution Petition No.3 of 2023 was posted for appearance and counter on 17.04.2023, the first petitioner fell ill due to Jaundice and thereby, he was unable to appear before the Court. He would further submit that the petitioners have not encroached the property and the petitioners have not violated the order of the Court. He would further submit that the delay is not huge and it is only 132 days and the reason assigned for dismissing REA No.1 of 2023 in E.P.No.3 of 2023 is unsustainable in law and the petitioners also undertake that they would co-operate for the early disposal of the petition by the Execution Court.

4.Per contra, Mr.M.Santhana Raman, learned counsel appearing for the respondent, would submit that the respondent/decreed holder had obtained the decree in the year 1998 and the petitioners having kept quite



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

for a long time and during the year 2022, had in violation of the Court order, encroached the property and thereby, constrained the decree holders to initiate Execution Proceeding. He would further submit that the respondent-decree holder had already given a complaint before the Edappadi Police Station and during the enquiry by the police, the petitioners/judgment debtors accepted to obey the decree, however, they had willfully evaded without appearing before the Court and frustrated the decree holder despite their knowledge about the posting of the case for their appearance and filing objections on 17.04.2023 and thereby, he would object for allowing the revision petition.

5.Heard the leaned counsel appearing for either side and perused the materials available on record.

6.On such perusal, it is seen that the suit in O.S.No.134 of 1997 on the file of District Munsif, Sankari, has been filed by the respondent's parents against the first petitioner's husband and mother in law for the relief of permanent injunction. The said suit was decreed on 26.06.1998. The respondent has filed R.E.P.No.3 of 2023 and when the said petition is posted for the appearance of the petitioners herein on 17.04.2023, they



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

had not appeared and thereby, they were set ex-parte. Thereafter, the petitioners had filed a petition in R.E.A. No1 of 2023 in R.E.P.No.3 of 2023 in O.S.No.134 of 1997 seeking to condone the delay of 132 days in filing the petition to set aside the exparte order passed against them on 17.04.2023 and the same was dismissed on 06.03.2024. Challenging the said order, the petitioners have filed the present civil revision petition. It is the case of the petitioners that the first petitioner suffered with Jaundice and thereby, she had not attended the Court on 17.04.2023. The learned District Munsif-cum-Judicial Magistrate, Edappadi, while dismissing REA.No.1 of 2023 in E.P.No.3 of 2023, had observed that no Medical Certificate has been produced by the first petitioner to substantiate her claim. It is the claim of the respondent/decreed holder that the revision petitioners had violated the decree made in O.S.No.134 of 1997 and constructed a compound wall by encroaching 90 sq.ft., of the land. In this regard, an enquiry has to be conducted to find out as to whether an encroachment has been made by the petitioners or not and an opportunity must be given to the petitioners to prove their case. Though there had been laches on the part of the petitioners/judgment debtors, this Court, in the interest of justice, is inclined to condone the delay of 132 days by imposing a cost of Rs.10,000/-.



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

7. Accordingly, the order passed in R.E.A.No.1 of 2023 in E.P.No.3

of 2023 dated 06.03.2024 stands set aside and the civil revision petition stands allowed subject to a condition that the petitioners shall pay a sum of Rs.10,000/- towards costs to the respondent within a period of two weeks from the date of receipt of a copy of this order. The petitioners shall also co-operate for the speedy disposal of the E.P.No.3 of 2023. The Court below shall take every endeavour to complete and dispose of E.P.No.3 of 2023 as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected civil miscellaneous petition is closed.

01.10.2024

Index: Yes/No
raa

Note: Issue copy of the order forthwith.

To

1. The District Munsif-cum-Judicial Magistrate Court, Edappadi.



WEB COPY



C.R.P. No.3271 of 2024 & C.M.P.No17510 of 2024

A.D.JAGADISH CHANDIRA, J.

raa

C.R.P. No.3271 of 2024

01.10.2024