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CRP..No.3440 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3440 of 2024 and C.M.P.No.18706 of 2024

Jayaraman (Died)

1.Rajakumari

2.Radha

Srinivasan (Died)

..Petitioners

Vs.

T.S.Chockalinga Gramani (Died)

Punithavathy (Died)

1.Umadevi

2.T.C.Shankar

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 05.08.2024 made in E.P.No.2034 of 2002 in O.S.No.1851 of 1989 on the file of the Learned X Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.W.M.Abdul Majeed

For Respondents : Mr.C.Prakasam
for Mr.A.Asokan



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ORDER

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This petition has been filed as against the fair and decretal order dated 05.08.2024 made in E.P.No.2034 of 2002 in O.S.No.1851 of 1989 on the file of the Learned X Assistant Judge, City Civil Court, Chennai.

2. The learned counsel for the petitioners would submit that the respondents/decreed holders/plaintiffs have filed E.P.No.2034 of 2002 to execute the judgment and decree passed in O.S.No.1851 of 1989 dated 03.07.1997. The petitioner along with her mother, who are the legal heirs of the original defendant in the suit had filed E.A.No.2 of 2021 under Section 47 of Code of Civil Procedure. When the matter was in the midst of the cross examination of the petitioner as PW1, the case had been posted for continuation of cross examination on 27.06.2024. However, due to inadvertence, the counsel for the petitioner had noted the next day of hearing as 27.07.2024 and thereby, the petitioner was unable to be present on 27.06.2024 for continuation of cross examination. Thereby the petition in E.A.No.2 of 2021 came to be dismissed for default on 27.06.2024. On information by the counsel for the petitioner had within a period of 15 days, on 12.07.2024, had filed an application to restore E.A.No.2 of 2024. The Executing Court had returned the application for certain compliance on



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05.08.2024 and on the same day had issued fresh delivery warrant for compliance by 23.09.2024. Challenging the same, the present revision is filed.

3. The learned counsel would submit that the petitioner has been effectively pursuing the E.A.No.2 of 2021 filed under Section 47 of Code of Civil Procedure and it has been dismissed on account of noting the date wrongly and if the petition is not restored and the warrant is executed and if the petitioners are evicted, they will be put to great hardship. He also submitted that they are ready to co-operate with the Executing Court in completing the enquiry on a day to day basis and thereby seek to set aside the impugned order dated 05.08.2024.

4. Mr.C.Prakasam, the learned counsel for the respondents/decree holders submitted that the judgment and decree passed in O.S.No.1851 of 1989 is of the year 1997 and the petitioners/judgment debtors are filing petition after petition for delaying the execution process. Hence, opposed this petition.

5. Heard both sides and perused the materials placed on record.



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6. Taking into consideration of the facts and circumstances of the case, the petitioner had not appeared for hearing on 27.06.2024 alone and the petition filed under Section 47 of Code of Civil Procedure had been dismissed for default and the restoration petition has been filed within a period of limitation, this Court is of the opinion that in the interest of justice, one opportunity can be given to the petitioner to pursue the petition and the revision may be allowed on terms and by suitably compensating the respondents/decreed holders.

7. In view of the above, the fair and decretal order dated 05.08.2024 made in E.P.No.2034 of 2002 in O.S.No.1851 of 1989 on the file of the Learned X Assistant Judge, City Civil Court, Chennai is hereby set aside, on condition that the petitioners shall deposit a sum of Rs.5000/- before the Court within one week from the date of receipt of a copy of the Order and on such deposit being made, the E.A.No.2 of 2021 shall be restored and the Court shall take every endeavour to dispose E.A.No.2 of 2021 within a period of four weeks. The cost of Rs.5000/- deposited shall be paid to the respondents/decreed holders.



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8. Accordingly, the C.R.P.No.3440 of 2024 is allowed. No costs.

Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

To,

X Assistant Judge,
City Civil Court, Chennai

A.D.JAGADISH CHANDIRA, J.,



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