



WEB COPY



CRP.No.5051 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.5051 of 2024

G.Arumugam (Died)

Represented by its Power Agent Kamala

Represented by his legal heirs

1.Kamala

2.Balaji

3.Thennagi

(Amended as per Order in I.A.No.152 of 2009

dated 15.07.2009)

.. Petitioners

Versus

G.Ganapathy

.. Respondent

Prayer:- Civil Revision Petition filed under Section 151 of Code of Civil Procedure, to set aside the order passed by the learned Principal Sub-Court at Pondicherry in E.A.No.2 of 2023 in E.P.No.137 of 2006 in O.S.No.57 of 2004 dated 18.01.2024.

For Petitioner	:	Mr.B.Narenkumar
For Respondent	:	Mr.D.Ashok Kumar

ORDER



CRP.No.5051 of 2024

WEB COPY

Challenging the order dismissing the application filed to restore the execution petition, the present revision petition is filed.

2. Originally, the suit has been filed for recovery of possession, the same has been decreed. Thereafter, E.P.No.137 of 2006 has been filed. When the said execution petition was posted on 06.06.2006 for non payment of batta, the EP was dismissed for default. Immediately, an application has been filed within a period of one month for restoration of the execution petition. The reasons assigned in the affidavit of the application to the effect that on 06.06.2023, the petitioner fell ill, therefore, she was not in a position to be present before the Court. The said application was opposed by the respondent on the ground that the petitioners are not the legal heirs of the deceased. Further, third party obstructors' application filed under Order XXI Rule 97 of CPC was filed and the same was dismissed and appeal is pending in A.S.No.7 of 2022. The Trial Court has dismissed the application on the ground that no evidence has been produced to prove that the petitioner was suffering from fever and the delivery has not been effected in many hearing. Challenging the same, the present revision has been filed.



CRP.No.5051 of 2024

WEB COPY

3. The learned counsel for the petitioners submitted that the petitioner was suffering from fever and due to miscommunication, the petitioner was not aware of the status of the case. Hence, seeks for liberal approach in restoring the execution petition.

4. The learned counsel for the respondent submitted that the delay of each days have not been properly explained by the petitioner, hence, the Trial Court rightly dismissed the application. Hence, opposed the revision.

5. It is relevant to note that when the petitioners have come up with an application to restore the execution petition within one month with the plausible explanation that she fell ill, the Trial Court ought to have granted an opportunity to prosecute the matter. Having obtained the decree, the rights of the parties cannot be shut in the execution stage on the technical grounds. This Court is of the view that the Trial Court has mechanically dismissed the application. Effecting and taking the delivery is the duty of the Amin, the parties cannot be blamed for that. Accordingly, the impugned order is set aside. The Trial Court shall proceed the execution petition and dispose of the same expeditiously.



WEB COPY



CRP.No.5051 of 2024

N.SATHISH KUMAR, J.,

dhk

6. In view of the above, this revision petition stands allowed. No costs.

05.12.2024

dhk

Index : Yes/No

Internet : Yes/No

To,

The Principal Sub Judge
Principal Subordinate Court, Puducherry

C.R.P.No.5051 of 2024