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C.R.P.No.3049 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3049 of 2021

and

C.M.P.No.21534 of 2021

M/s.Saravana Kumar and Co
(Shree Sakthi theater)
By its partner Mrs.S.Sulosana
Annur Road,
Mettupalayam,
Coimbatore District.

... Petitioner

Vs.

The Municipal Commissioner,
Mettupalayam Municipality
Mettupalayam

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 27.01.2020 passed in E.A.No.3 of 2019 in E.P.No.3 of 2019 in O.S.No.336 of 2007 on the file of the Sub-ordinate Judge, Mettupalayam.

For Petitioner
For respondent

: Mr.P.Veeraraghavan
: Mr.B.Anand
Standing Counsel



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court staying the execution petition filed by the petitioner till the disposal of petition filed by the respondent under Section 5 of Limitation Act seeking to condone the delay of 1039 days in filing petition to set aside the *exparte* decree passed against the respondent/defendant.

2. The petitioner herein filed a suit for declaration in respect of suit property marked as CDEF, injunction and for recovery of compensation for demolition of his wall. The respondent municipality which was arrayed as defendant remained *exparte*. An *exparte* decree was passed in favour of petitioner granting decree as prayed for. As per the decree, the respondent was directed to pay the compensation amount. The petitioner filed execution petition in E.P.No.3 of 2019 for recovery of the compensation amount payable by the respondent under the decree. At this juncture, the respondent filed an application in E.A.No.3 of 2019 seeking stay of execution petition till the final



disposal of the suit. The Court below partly allowed the said application by staying execution proceedings till the disposal of the petition filed by the respondent to condone the delay in filing petition to set aside the *ex parte* decree.

3. When the matter is taken up for hearing, it is stated by both the counsels that petition filed by the respondent to set aside the *ex parte* decree and also the petition to condone the delay in filing such petition to set aside the *ex parte* decree were not numbered due to misplacement of the original suit papers. In such circumstances, when the petition filed by the respondent to set aside the *ex parte* decree and to condone the delay in filing petition to set aside the *ex parte* decree are not even numbered, the execution proceedings cannot be stayed perennially with the hope that the petition filed by the respondent will be numbered. Taking into consideration the peculiar circumstances of the case, this Court is inclined to impose certain conditions on the respondent for stay of execution petition till the disposal of application filed by the respondent under Section 5 of Limitation Act.



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4. The respondent filed a petition to condone the delay of 1039 days in filing petition to set aside the *ex parte* decree and the same is not yet numbered. Therefore, the Court below is directed to expedite the process of numbering the application filed by the respondent to condone the delay in filing petition to set aside the *ex parte* decree and dispose of the same as expeditiously as possible. As a condition for staying the execution proceedings till the disposal of the condone delay petition, the respondent municipality is directed to deposit a sum of Rs.1,00,000/-(Rupees One Lakh only) to the credit of E.P.No.3 of 2019 pending on the file of learned Sub-Judge, Mettupalayam within a period of four weeks from the date of receipt of a copy of this order. The executing Court is directed to deposit the above said amount in a fixed deposit in any one of the nationalized bank initially for a period of one year. If the respondent failed to deposit the said amount within the time stipulated, the stay granted in favour of respondent shall automatically vacated and petitioner is at liberty to proceed with E.P.No.3 of 2019. In case, the petition filed by the respondent to condone the delay in filing petition to set aside the *ex parte*



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decree is allowed and the *exparte* decree also set aside, the respondent is entitled to withdraw the amount deposited together with interest if any accrued on such deposit.

5. With these observations, this Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

06.02.2024

Index : Yes / No

Internet : Yes / No

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To

The learned Sub-ordinate Judge, Mettupalayam.



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S.SOUNTHAR, J.

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