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C.R.P.[NPD].No.4385 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 04.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4385 of 2024

S.Arulanandam

Rep. by his Power Agent Mt.Thomas

. . . Petitioner

Versus

1. Mrs.J.Selin

2. Y.Joseph

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to allow this revision petition by setting aside the fair and decreetal Order passed in E.A.No.1 of 2024 in E.P.No.5297 of 2022 in O.S.No.264 of 2015 by the IX Assistant City Civil Court, Chennai dated 20.08.2024.

For petitioner : Mr.J.Justin

For respondents : --



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ORDER

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Challenging the fair and decreetal Order dismissing the application filed by the petitioner to condone the delay of 326 days in filing a petition to restore the Execution Petition, which was dismissed for default, the present Civil Revision Petition has been filed.

2. The execution petition has been filed for recovery of possession. According to the petitioner, he has obtained a decree in his favour in respect of the immovable property in O.S.No.264 of 2015 on the file of the VI Assistant City Civil Court, Chennai. The said decree and judgment has been confirmed by the appellate Court and as against which, a second appeal has been filed and the same is pending before this Court. However, no stay has been granted. Therefore, he has filed the Execution Petition for recovery of possession. The said Execution Petition was dismissed for default on 03.11.2023. Thereafter, an application has been filed to restore the Execution Petition with a delay of 33 days on the ground that on the date of dismissal, the petitioner was sick and sought to condone the delay. The said application has been dismissed on the ground that sufficient explanation has not been given except contending that the petitioner was sick, no



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plausible explanation was forthcoming on the side of the petitioner. Challenging the same, the present revision has been filed.

3. I have perused entire records. The very decree and judgment relied upon by the petitioner is to seek recovery of possession in the execution petition. When carefully perused, the very execution petition for recovery of possession itself is not maintainable. In the suit, the petitioner has not sought for recovery of possession. The relief sought in the above suit is only to declare that the sale deed dated 18.01.2010 executed by the first defendant in favour of the second defendant is null and void and for permanent injunction restraining the defendants and their men from alienating the suit property. Except theses two reliefs, no relief for recovery of possession has been sought in the suit. Therefore, this Court is of the view that in the absence of any relief for recovery of possession granted in favour of the petitioner, the execution petition filed by the petitioner for recovery of possession is not maintainable. Hence, there is no purpose in entertaining the Execution Petition and this Civil Revision Petition. It is open to the revision petitioner to seek appropriate amendment in the pending second appeal.



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4. With the above observation, this Civil Revision Petition is dismissed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

vrc

order in:

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