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C.R.P.No.4525 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM :

The Hon'ble MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.No.4525 of 2023
and C.M.P.No.27097 of 2023**

Samiya

.. Petitioner

-VS-

Mohammed Ghouse (Deceased)

1. D.K.Gowhar Sulthana
2. M.G.Shahetha Sulthana
3. M.G.Wahitha Sulthana
4. M.G.Syed Mushtaq
5. M.G.Syed Ashwag
6. M.G.Ashviya Sulthana
7. M.G.Syed Ameen
8. M.G.Kowsar Sulthana
9. M.G.Anjum Sulthana
- 10.M.G.Thabassum Sulthana
- 11.C.Syed Samiullah
- 12.G.Ayisha Sulthana
- 13.M.G.Thanveer
- A.Bibi (Died)
- 14.S.Mohammed Ali
- 15.A.Saira Banu
- 16.M.G.Syed Azeem
- 17.Ummaiya
- 18.M/s.Irfan Traders
No.4-A, 6th Cross, Jakkappan Nagar,
Krishnagiri.
- 19.The Branch Manager,
I.O.B. Main, Krishnagiri.
- 20.The Branch Manager,

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TamilNadu Mercantile Bank,
Krishnagiri.

21.Kalaivani

22.T.V.Karunakaran

.. Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 28.08.2023 made in REA No.10 of 2023 in REP No.72 of 2024 in O.S.No.117 of 1981 on the file of Principal Subordinate Judge, Krishnagiri.

For Petitioner	:	Mr.A.V.Arun
For Respondents	:	Mr.P.Sesubalan Raja for RR 1 to 3 and 6 to 12
	:	Mr.R.Vinothkumar for R-14
	:	Mr.Y.Prakash for RR 15 & 17
	:	Not Ready in Notice reg. RR 4, 5, 13, 16, 18 to 22

* * * * *

ORDER

This civil revision petition arises against the order passed by the Executing Court in R.E.A.No.10 of 2023 in R.E.P.No.72 of 2004 in O.S.NO.117 of 1981 on the file of the Principal Subordinate Judge at Krishnagiri.

2. A third party to the suit proceeding is the civil revision petitioner. O.S.No.117 of 1981 was filed by the decree holder



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seeking for specific performance of agreement of sale entered into between him and the grandmother of the civil revision petitioner.

The suit came to be decreed and an appeal preferred to this Court came to be allowed. A further Letters Patent Appeal in L.P.A.No.108 of 1998 was allowed restoring the decree of specific performance granted by the trial Court.

3. In order to put the decree into execution, an execution petition was filed in E.P.No.72 of 2004. The Executing Court had also executed a sale deed on 08.09.2008. Thereafter, to take possession of the property, the decree holder filed E.A.No.230 of 2010. Unfortunately, during the pendency of the proceedings, the decree holder went to meet his maker. Proceedings had to be taken to bring on record his legal representatives.

4. While this is the case, the civil revision petitioner claimed that her father had purchased the property in a Court auction sale and therefore, she obstructed the execution of the decree. Therefore, E.A.No.201 of 2017 was filed for removal of obstruction and to take delivery of the property. In the said petition, notice was ordered to the obstructors and the matter was posted on 22.06.2018.



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5. According to the petitioner, she was afflicted with Jaundice, which seems to be a family disease running in the family of the petitioner, as is clear from the same reason given by her mother in the connected civil revision petition No.1740 of 2023. She claimed that she was suffering from Jaundice for a period of 4 years and due to Covid-19, she lost track of the proceedings. She would state that when the country recovered from the pandemic, she remembered that an application was filed against her for removal of obstruction and took out an application to set aside the exparte order dated 22.06.2018. However, since 30 days time as required by the Code had passed on, an application was filed to condone the delay of 1431 days in filing the application to set aside the exparte order under Order 21 Rule 106 of the Code of Civil Procedure.

6. A detailed counter was filed by the decree holder stating that no reason had been given in the application filed to condone the delay for setting aside the exparte order. In terms of Order 21 Rule 106, in an application to set aside an exparte order passed by the Court, there should be sufficient cause for non-appearance when the application was "called on for hearing". This is clear from Order 21



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Rule 106(1). The same rule applies to Section 5 of the Limitation Act.

If sufficient cause is not shown, then the only order that has to be passed is that of dismissal. In this particular case, the learned trial Judge has applied his mind to the facts of the case and came to the conclusion that as the petitioner had not produced any records to show that she was suffering from illness, he dismissed the petition. Furthermore, he came to the conclusion that the fact that Covid-19 existed in the country has absolutely no connection with the facts of the present case because the order setting the petitioner exparte was passed at least two years before Covid-19 had even been discovered.

7. Mr.A.V.Arun, learned counsel for the petitioner, would reiterate the submissions made before the trial Court and the same would be the case with Mr.Sesubalan Raja, learned counsel for the contesting respondents.

8. This is an unfortunate case where the decree holder has been knocking the doors of the Court from 1981. Four decades have gone by and the decree holder is yet to see the colour of the coin or enjoy the fruits of the decree. No doubt, he has got a sale deed in his favour pursuant to the order passed in the execution petition, but



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that by itself is not sufficient to satisfy the decree that has been passed by the Court. The obstruction petition has been filed by the decree holder to remove the obstructions that had been made by the civil revision petitioner. In that petition, as early as in 2018, she had been set exparte and the Court had proceeded further. It might be possible that a person would be suffering with the disease for more than four years, but that requires the party to produce the medical records before the Court to substantiate the same. In the absence of any record being produced before the Court, the learned Principal Subordinate Judge has been left with no other option than to dismiss the petition. I have to concur with the view taken by the learned Principal Subordinate Judge that absolutely no cause has been shown in the present case. Even if I were to exclude the period of Covid-19 from the total period of delay, still it leaves around nearly 750 days as totally unexplained.

9. In the light of the above discussion, I have no reasons to interfere with the order passed by the learned Principal Subordinate Judge, Krishnagiri. The civil revision petition is dismissed. The order dated 28.08.2023 in R.E.A.No.10 of 2023 in R.E.P.No.72 of 2004 in O.S.No.117 of 1981 stands confirmed.

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10. The learned Principal Subordinate Judge is directed to expedite the proceedings and conclude the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Website : Yes/No
Speaking/Non-speaking Order

sra

To

The Principal Subordinate Judge
Krishnagiri.



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V.Lakshminarayanan, J.

(sra)

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