



C.R.P(MD)Nos.1176 and 1189 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)Nos.1176 and 1189 of 2024

and

C.M.P(MD)Nos.6709, 6778, 8167 and 8166 of 2024

C.R.P(MD)No.1176 of 2024

Subitha

... Petitioner / Defendant

Vs

M.Sundaram

... Respondent / Plaintiff

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for records pertains to set aside the dismissal order passed in E.A.No.3 of 2023 in E.P.No.5 of 2022 in O.S.No.60 of 2020 on the file of the learned Subordinate Judge, Eraniel, Kanyakumari District.

For Petitioner : Mr.K.P.Krishna Doss

For Respondent : Mr.T.Wins



C.R.P(MD)Nos.1176 and 1189 of 2024

C.R.P(MD)No.1189 of 2024

Subitha

... Petitioner / Defendant

Vs

Thankappan

... Respondent / Plaintiff

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for records pertains to set aside the dismissal order passed in E.A.No.3 of 2023 in E.P.No.24 of 2022 in O.S.No.62 of 2020 dated 03.04.2024 on the file of the learned Subordinate Judge, Eraniel, Kanyakumari District.

For Petitioner : Mr.K.P.Krishna Doss

For Respondent : Mr.N.S.Ramakrishna Doss

ORDER

These Civil Revision Petitions are filed to call for records pertains to set aside the dismissal order passed in E.A.No.3 of 2023 in E.P.No.5 of 2022 in O.S.No.60 of 2020 and E.P.No.24 of 2022 in O.S.No.62 of 2020 dated 03.04.2024 on the file of the learned Subordinate Judge, Eraniel, Kanyakumari District.



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2. The facts in brief is that the suit in O.S.No.60 of 2020 was filed by the respondent herein, namely Sundaram, to recover a sum of Rs.3 Lakhs with subsequent interest and cost. The suit was decreed as prayed for with cost and subsequent interest by the judgment and decree dated 07.09.2021. To execute the decree, he filed E.P.No.5 of 2022 before the Subordinate Judge, Eraniel. The revision petitioner herein did not appear before the Execution Court and so ex parte order was passed. To set aside the ex parte order, she filed E.A.No.3 of 2023. That came to be dismissed by the Execution Court by order dated 03.04.2024. Against which C.R.P(MD)No.1176 of 2024 is preferred.

3. Similarly, another suit O.S.No.62 of 2020 was filed by one Thangappan to recover the sum of Rs.4,38,515/- with subsequent interest and cost. To execute the decree, he filed E.P.No.24 of 2022 before the very same Court. In that matter also, the revision petitioner remained ex parte. To set aside the ex parte order, she filed E.A.No.3 of 2023 which came to be dismissed by the Execution Court against which, C.R.P(MD)No.1189 of 2024 is preferred.



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4. Since both the revisions are filed by the very same persons, though the respondents are different, the matters were heard in common and common order is passed.

5. Heard both sides.

6. These Civil Revision Petitions are filed by the revision petitioner stating that after receiving the notice, she could not arrange a person to appear on her side and thereafter she was affected by viral fever. In both the matters, the very same reason is stated.

7. It was resisted by the respondent by filing counter. The execution Court recorded a finding that on behalf of the revision petitioner, one advocate entered appearance and inspite of repeated adjournment, counter was not filed and finally it was posted on 29.07.2022 and thereafter also the revision petitioner did not file any counter. So the reason assigned by the revision petitioner that she could not arrange an advocate to file counter is not correct on record. The



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order was passed on 29.07.2022. The petition was filed only on 04.02.2023, beyond 30 days time mentioned in Order 21 Rule 106(3) of C.P.C. After statutory period of six months, only the above said petition came to be filed. The reason assigned was also not supported by any evidence. Similarly, in O.S.No.62 of 2020 also the very same reason was assigned.

8. That was resisted by the respondent by filing a counter and the execution Court recorded a finding that here also the revision petitioner entered appearance through an advocate and inspite of repeated adjournment, counter was not filed. So an order was passed on 18.11.2022. Apart from that, it is also stated that the reason assigned by the revision petitioner is not supported by any evidence and as per the Order 21 Rule 106(3) of CPC, application ought to have been filed within 30 days but it has been filed beyond 3 months without any proper reason.

9. After going through the records and after hearing both the parties, the revision petitioner was required to inform the Court whether



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they are ready to deposit Rs.1,50,000/- each in both the matters before the execution Court. The revision petitioner was also present before this Court and stated that the respondent are her close relatives. She discharged the entire loan amount. Nothing more is required to be paid by her, even she is not ready to deposit the money now proposed by this Court. On that account, the matter was ordered to be listed for orders today.

10. Perusal of records shows that having entered appearance through advocate, now it is not proper on the part of the revision petitioner to say that she could not arrange an advocate to file counter. This statement is not correct on record. She ought to have appeared before the trial Court and contested the matter. Having failed in that, now it is too late for her to say that she could not arrange an advocate. Since the reason assigned by her is not proper and acceptable, I find that the order passed in E.A.No.3 of 2023 in E.P.No.24 of 2022 in O.S.No.62 of 2020 dated 03.04.2024 by the file of the learned Subordinate Judge, Eraniel, Kanyakumari District, requires no interference.



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11. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

05.12.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

1.The Subordinate Judge, Eranial, Kanyakumari District.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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ORDER
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