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C.R.P(MD)No.1386 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1386 of 2024

and

C.M.P(MD)No.8214 of 2024

Manimala

... Petitioner/Petitioner/
Respondent/Defendant

Vs.

Dhinakaran(Died)

1.Sowmiya

2.Sabari Priya

... Respondents/Respondents
2&3/Petitioners 2&3/Plaintiffs2&3

Civil Revision Petition is filed under Section 24 of the Code of Civil Procedure, to set aside the condition imposing the cost of 50 percent of the decree amount in petition and order dated 06.04.2024 in E.A.No.1 of 2024 in E.P.No.247 of 2023 in O.S.No.121 of 2019 on the file of the Additional District Judge, Dindigul.

For Petitioner

:Mr.S.Selva Aditya

ORDER

This Civil Revision Petition is filed against the order dated 06.04.2024 in E.A.No.1 of 2024 in E.P.No.247 of 2023 in O.S.No.121 of



2019 on the file of the Additional District Judge, Dindigul.

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2.The grievance of the petitioner is that the decree is an ex-parte decree. The petitioner has already filed an application for setting aside the ex-parte decree along with a petition for condonation of delay. Already the delay is condoned and the application for setting aside the ex-parte decree is pending. Since the execution proceedings was pending, the petitioner has also filed an application for stay of all further proceedings in execution. The said application is now being allowed with a condition to deposit 50% of the decree amount.

3.Mr.G.Prabhuraja Durai, learned counsel appearing on behalf of the petitioner would contend that this is a case where the amount has been alleged to be borrowed by cash. There is no proof for advancing money. The Petitioner had made earlier transaction with the third party and blank form of promissory note was given by him during the said transaction, which is now being misused by filling up huge amount. The petitioner is a destitute widow and has no money to pay the said huge amount. Already the petitioner's property was attached. While on the one hand the petitioner's property is attached, on the other hand, the petitioner is directed to pay 50% of the decree amount. The Court imposed such condition, while granting



stay. Such condition should not be onerous. Therefore, unless and otherwise, this Court interferes with the impugned order, the petitioner would be caused grave prejudice.

4.I have considered the submissions made by the learned counsel for the petitioner and perused the material records of the case.

5.It could be seen that the suit in O.S.No.121 of 2019 was filed long long ago in the year 2019. The ex-parte decree was passed in the year 2022. Even though the petitioner had filed both the applications for condonation of delay and setting aside petition, the petitioner has not pursued the same and now two years have gone by after filing these applications.

6.Be that as it may, the execution petition is of the year 2022. As a matter of fact that the decree holder after getting the decree had to start his journey once again by way of execution petition. In the said execution petition, order has been passed. Now it is stated that during the course of next week, the property is put under sale. Therefore, at this stage, this Court cannot interfere with.



7.Considering the overall facts and circumstances of the case, I am of the view that the learned District Judge, Dindigul has not committed any error in imposing the condition of depositing 50% of the decree amount.

Therefore, this Civil Revision Petition has no merit and therefore, the same is liable to be dismissed.

8.It is now brought to the notice of this Court by the learned counsel for the petitioner that subsequently, after filing the Civil Revision Petition for non-compliance of the condition, E.A has been dismissed and now the property is put up for sale during the course of next week. Therefore, the learned counsel would submit that atleast some breathing time should be given to the petitioner.

9.In view of the nature of the order, that is going to be passed, even though modification is made to the order impugned in the Civil Revision Petition, the same is passed without even giving notice to the respondent.

10.In view thereof, the civil revision petition is dismissed on the following terms:

(i)The order of the learned District Judge, Dindigul, in E.A.No.1 of 2024 in E.P.No.247 of 2023 in O.S.No.121 of 2019 dated 06.04.2024, shall



stand confirmed.

(ii)The sale if any, in the said execution petition in E.P.No.247 of 2023, may be carried out as per law.

(iii)However, the time for compliance of the order of the learned District Judge, is extended till 12.07.2024, if the petitioner deposited the amount as directed by the trial Court on or before 12.07.2024 to the credit of O.S.No.121 of 2019. If the amount is not paid, the sale will be confirmed and further proceedings shall be undertaken in accordance with law.

(iv)If the said amount is deposited, the same shall be redeposited in any interest bearing deposit and the parties will be entitled to withdraw the same depending upon the outcome in the suit and the order dismissing the E.A.No.1 of 2024 will stand modified and there shall be an order of stay till the disposal of the application for setting aside the ex-parte decree.

(v)No costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

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To

1.The Additional District Judge,
Dindigul.

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

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