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C.RP(MD)No.1382 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.07.2024

CORAM

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

C.R.P(MD)No.1382 of 2024

and

C.M.P(MD)No.8175 of 2024

1.A.Mumtaj Banu

2.A.Ajish

... Petitioners/Petitioners/
Respondents/Defendants

Vs.

M.A.Naina Mohammed

...Respondent/Respondent/
Petitioner/Plaintiff

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order passed in E.A.No.29 of 2023 in E.P.No.116 of 2016 in O.S.No.1152 of 2012 on the file of the II Additional Sub-Court, Madurai, dated 11.03.2024.

For Petitioners
For Respondent

:Mr.D.Venkatesh
:Mr.S.Balamohan

ORDER

This Civil Revision Petition arises out of the order, dated 11.13.2024 in E.A.No.29 of 2023 in E.P.No.116 of 2016 in O.S.No.1152 of 2012 by the II Additional Sub-Court, Madurai.



2.The above original suit is filed for recovery of money based on a promissory note. The promissory note was executed on 10.12.2009. The suit was filed on 10.12.2012. The defendant, after filing the written statement, did not appear subsequently and therefore, was set ex-parte and decree was passed. The above execution petition was filed to execute the decree. In the execution petition, the above E.A.No.29 of 2023 was filed under section 47 of the Code of Civil Procedure, on the ground that since the suit is filed one day after the expiry of limitation, the decree itself is invalid in law and therefore the same can be gone into as a question regarding the execution and prayed for dismissal of the execution petition. The said petition is dismissed and hence the revision petition.

3.The learned counsel appearing on behalf of the petitioners would raise two questions before this Court. Firstly, relying upon the judgment of a Co-ordinate Single Bench of this Court in *C.S.No. 915 of 2002 dated 19.11.2014*, he would contend that the date of execution of the promissory note was not excluded in the said case and therefore, the suit is barred by limitation. Relying upon the judgment of the Co-ordinate Single Bench of this Court in C.R.P.No.3980 of 2014, more specifically, on paragraph 6, where the judgment of the Hon'ble Supreme Court of India in ***K.P.Natarajan and another-Vs-Muthalammal and others***, reported in



2021(15) SCC 817, was followed by the Co-ordinate Bench to contend that the validity or otherwise of a decree can be gone into even in collateral proceedings and when it can be gone into in collateral proceedings, the same can be raised under Section 47 of the Code of Civil Procedure.

4.The said arguments are resisted by the learned counsel appearing on behalf of the respondents by pointing out Section 21 of the Limitation Act, where under the date of execution of the instrument has to be excluded and therefore the suit is within the limitation. He would further submit that even otherwise, the decree cannot be rendered as invalid in law as the plea of limitation has to be specifically taken and in this case, the written statement was filed by the defendant in which the said plea was not taken. The learned counsel would further bring to the notice of this Court in any event, the said question does not arise at all in this case as 10.12.2012 is a Monday and therefore, even assuming that 09.12.2012 is the last date, still the suit is within the time.

5.For the last limb of argument, there cannot be any reply on behalf of the learned counsel for the petitioners as the calendar is clearly verifiable and 10.12.2012 is a Monday. In view thereof, the question as to application of 12(1) of the General Clause Act, does not even arise in this case and the



petition under Section 47 itself is clearly not maintainable and the grounds raised therein are without any merits.

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6.In view thereof, the Civil Revision Petition is dismissed. Considering the fact that the execution petition is of the year 2016, the trial Court is requested to take up the same for expeditious disposal and dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2024

NCC:Yes/No

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To

1.The II Additional Sub-Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

Ns

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