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C.R.P.(MD)No.3126 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3126 of 2023

and

CMP (MD) No.16088 of 2023

O.1925 Puliyarai Kootturavu Kuthagaitharar
Pannai Sangam,
Puliyarai, Sencottai Taluk,
Tenkasi District
represented by its President : Petitioner/Respondent

Vs.

The Commissioner/Executive Officer,
Arulmigu Thirumalaikumaraswamy Temple.
Panpoli,
Tenkasi District. : Respondent/Petitioner

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order passed in EP No.42 of 2023 (P.T.17/2018), dated 04/07/2023 on the file of the Revenue Court/Special Deputy Collector, Tirunelveli.

For Petitioner : Mr.N.Sankar Ganesh

For Respondent : Mr.S.Manohar



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O R D E R

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This civil revision petition is filed seeking to set aside the order passed in EP No.42 of 2023 (P.T.17/2018), dated 04.07.2023 by the Revenue Court/Special Deputy Collector, Tirunelveli.

2.The facts in brief:-

The respondent herein filed PT No.17 of 2018 seeking an order of eviction against the petitioner on the ground that there is willful default in payment of rent. That petition was allowed, on 30/01/2019 *ex-partely* and eviction was ordered with the condition that the petitioner must pay Rs.27,31,398/- within a period of three months, failing which, liberty was granted to the respondent herein to execute the order. Petition failed to comply the order. So, EP No.42 of 2023 was taken out by the respondent seeking execution. The petitioner appeared in EP No.42 of 2023 and filed his counter. Order was passed, on 04/07/2023 evicting the petitioner from the land.

3.Against which, this civil revision petition has been preferred.

4.Heard both sides.



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5.The learned counsel appearing for the petitioner would submit that to set aside the *ex-parte* order passed in PT No.17 of 2018, he filed a petition under section 5 of the Limitation Act to condone the delay in filing the petition to set aside the *ex-parte order* and that application was filed, on 04/07/2023. Without making enquiry in the petition, straightaway the order was passed in the main EP itself, rejecting the petition filed by the petitioner, on 04/07/2023.

6.Apart from that, it is also stated that PT No.17 of 2018 was filed against the Special Officer. He was subsequently replaced by the election body. Upon receiving the summon in EP No.42 of 2023, he made a petition to set aside the *ex-parte* order. Since a proper party was not impleaded in the main petition, the order passed by the Revenue Court is *per se* illegal.

7.Heard both sides.

8.As mentioned in the preamble portion, the Society was represented by the Special Officer. He also received the summon. In spite of that, he failed to appear before the Revenue Court. After that only, the order was passed. Now to set aside the *ex-parte* order, the petitioner filed an application section 5 of the Limitation Act.



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9.In normal circumstances, section 5 application ought to have been entertained, enquired and disposed of independent. But it appears that the Revenue Court has dealt the execution petition as well as the petition filed by the petitioner jointly. It concluded that the delay has not properly explained.

10.As mentioned above, the grievance of the petitioner is that no separate order was passed. Had it been passed separately, he would have filed proper petition. Without giving that opportunity, straightaway delivery has been ordered.

11.No doubt that it is an irregularity committed by the Revenue Court. But there is no bar for the petitioner to challenge the above said order. But he straightaway filed this revision against the order passed in EP No.42 of 2023.

12.Even though, it has been stated that the Special Officer was replaced by the election body and because of that only there is a delay on the part of the petitioner in approaching the court, I am of the considered view that no reconsideration is warranted. The arrears stated to be paid from the Fasali 1413 to 1418.



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13.Since even after the eviction order was passed by the Revenue Court, no payment was made by the petitioner, I find no ground to interfere into the order passed by the Revenue Court.

14.In the result, this civil revision petition is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

14/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Revenue Court/
Special Deputy Collector,
Tirunelveli.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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