



Rev.Appln.No.165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Review Application No.165 of 2023
and C.M.P.No.20611 of 2023

Easwaramoorthi

... Petitioner

Vs.

Arunachala Gounder (died)

Palanisamy Gounder (died)

Rep by its L.Rs.

1. Kuilathal

2. Sundarasamy

3. Mahalingam

4. Sarojini

5. V.Loganathan

... Respondents

Prayer : Petition filed under Order XLVII Rule-1 r/w Section 114 of Code of Civil Procedure, to review the order passed in CRP.No.756 of 2015 dated 21.12.2022.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel

For Mr.M.Baskar

For Respondents : No appearance

ORDER

This petition has been filed to review the order dated 21.12.2022, passed by this Court in C.R.P.No.756 of 2015, thereby dismissing the Civil



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Revision Petition challenging the decree passed in E.A.No.168 of 2012 in E.P.No.409 of 2003 in O.S.No.384 of 1983 on the file of the learned I Additional District Munsif, Coimbatore.

2. The petitioner filed the above Civil Revision Petition as against the order dated 26.04.2013 passed by the learned I Additional District Munsif, Coimbatore, in E.A.No.168 of 2012 in E.P.No.409 of 2003 in O.S.No.384 of 1983, thereby dismissing the petition to set aside the sale in the auction conducted on 26.03.2012. This Court dismissed the Civil Revision Petition on the ground that the provision under Order 21 Rule 57 of CPC is not applicable to the case on hand. Insofar as the Order 21 Rule 89 of CPC is concerned, the Clause A of Sub Rule (1) of Rule 89 of CPC, requires the applicant to deposit in Court 5% of the purchase money for payment to the auction purchaser. Deposit of the requisite amount in the Court is a condition precedent or a *sine qua non* to an application for setting aside the execution of sale and such an amount must be paid within a period specified in the Rule and if the deposit is made after the time limit, the application must be dismissed. Therefore, the sale cannot be set aside unless entire amount specified in Sub Rule 1 of Rule 89 of CPC, is deposited within 60 days from the date of sale. To review the said order, the present Review Application has been filed by the petitioner.



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3. The learned Senior Counsel appearing for the petitioner brought to the notice of this Court that in order to comply the Order 21 Rule 89(1) of CPC, the Court below issued challan only on 28.08.2012. Immediately, the amount has been paid on 31.08.2012 to the tune of Rs.2,17,435/-. However, it was not brought to the notice of this Court. Further, he also relied upon the judgment of this Court in ***C.R.P.No.507 of 2016*** dated ***27.01.2023*** in the case of ***Pachamuthu & anr., Vs. Chakrapani & ors.***, which held that when an application was filed, it was the duty of the Court to dispose of the same promptly since the applicant declared that he would deposit the amount by the next day of the order to be passed by the Court in this regard. Therefore, the principle is *actus curiae neminem gravabit* which means that nobody should suffer for the act of the Court. It is the bounden duty of the Court to see that if a person is made to suffer by the mistake of the Court, he should be restored to the position he would have occupied by for the mistake.

4. In the case on hand, admittedly, the challan was issued only on 28.08.2012 and immediately the deposit was made on 31.08.2012. The said fact was not brought to the knowledge of this Court. Hence, the order dated 21.12.2022, passed by this Court in C.R.P.No.756 of 2015 cannot be sustained and is liable to be set aside.



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WEB COPY 5. In view of the above, the order dated 21.12.2022, passed by this Court in C.R.P.No.756 of 2015, is hereby recalled and the Civil Revision Petition filed by the petitioner stands allowed. The order dated 26.04.2013 passed by the learned I Additional District Munsif, Coimbatore, in E.A.No.168 of 2012 in E.P.No.409 of 2003 in O.S.No.384 of 1983, is hereby set aside and the auction conducted on 26.03.2012 is also hereby set aside.

6. Accordingly, the Review Application stands allowed. Consequently, connected miscellaneous petition is also closed. There shall be no order as to cost.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To

The I Additional District Munsif,
Coimbatore.



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G.K.ILANTHIRAIYAN, J.

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