



WEB COPY

A No.1835 of 2025

in

EP No.45 of 2021

MASTER

18.08.2025

1. This application has been filed by the applicant/deGREE holder to set aside the order of dismissal dated 08.11.2024 and to restore the EP No.45/2021.

2. Heard both side counsels. The learned counsel for the applicant submitted that the above EP was filed for recovery of a sum of Rs.94,66,65,116/- by arrest of the respondent/judgment debtor which was dismissed for default on 08.11.2024. The learned counsel submitted that he received a SMS in his mobile phone that the execution petition was posted on 08.11.2024 and so he deputed his junior to attend the EP but the junior counsel was little late to the court and came to know that the EP was dismissed for non prosecution. Further the learned counsel for the applicant submitted that due to the fault of the counsel, the applicant/deGREE holder should not be made to suffer and moreover they have already adduced their side arguments in the above EP and it was for the judgment debtor to argue the case and the very dismissal of EP for non-prosecution itself is not correct.

3. Per contra the learned counsel for the respondent has filed a detailed counter and has stated that this petition is not maintainable as the applicant has not made out sufficient cause to set aside the order. Further submitted that the applicant in his affidavit itself has stated that the listing of the case is well within his knowledge. In the said circumstances no proper explanation has been given by the applicant to allow this



application.

4. Before going into the facts of the case it would be appropriate to extract the relevant portion of the Code of Civil Procedure U/O 21 R105(1)(2) and U/O 21

WEED R106(1):Y

105. Hearing of application (1) The court, before which an application under any of the foregoing rules of this order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an order that the application be dismissed.

106. Setting aside order passed ex parte, etc (1) The applicant, against whom an order is made under sub rule (2) of Rule 105 or the opposite party against whom an order is passed ex parte under sub rule (3) of that rule or sunder sub rule (1) of Rule 23 may apply to the court to set aside the order, and if he satisfies the court that there was sufficient cause for his non appearance when the application was called or for hearing, the court shall set aside the order on such terms as to costs or otherwise as it tink fit, and shall appoint a day for the further hearing of the application.

5. As per the provisions of O 21 R 106(1) it could be seen that if the decree holder satisfies the court there was sufficient cause for his non appearance when the application was called, the court shall set aside the order on such terms as to costs or otherwise. Now, if the case on hand is looked into, it is seen that the counsel for the applicant has adduced his side arguments on 21.09.2022 itself and then the matter was subsequently adjourned for several occasions on the request made by the judgment debtor counsel and in fact on 1.2.2023 the EP was reserved for orders and adjourned to 17.03.20223 and then only on the representation made by the counsel for the Judgment



debtor the EP was adjourned to 29.3.2023 without passing of any orders and then pending for more than 2 years, only at the instance of judgment debtor counsel stating that Review Application pending and OSA pending. Even now it was the argument of the counsel for the judgment debtor that OSA is still pending and hence there is no necessity for the decree holder to restore EP and he can very well file fresh application once the OSA is disposed of and this contention of the learned counsel for the judgment debtor is not acceptable for the reason that even as per the version of both the applicant and the respondent no stay has been granted in the OSA. Under these circumstances and considering the fact that the applicant/deGREE holder counsel has already submitted his arguments before this court and also this court has reserved the matter for orders and was kept pending without passing any orders only at the request made by the respondent/judgment debtor, this Court is of opinion that if this application is allowed no prejudice will be caused to the Judgment debtor, on the other hand if this application is not allowed, the applicant/deGREE holder would be put to irreparable loss. Therefore for the forgoing reasons this court is inclined to allow this application.

6. Accordingly this petition is allowed. No costs.

MASTER