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C.R.P.(NPD) No.5352 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.01.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.5352 of 2024
and C.M.P.No.29737 of 2024

N.Krishna Kishore

... Petitioner/Petitioner/Judgment Debtor/Defendant

-VS-

G.Gajalakshmi

... Respondent/Respondent/Decree Holder/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 10.12.2024 passed in E.A.No.1 of 2024 in E.P.No.143 of 2021 in O.S.No.32 of 2016 on the file of the learned Subordinate Judge at Alandur.

For Petitioner : Mr.G.V.Sridharan

ORDER

A challenge has been made to the order of the Executing Court, dismissing the application filed to set aside the *ex parte* order dated 24.09.2018. Notice to the respondent is dispensed with, as no adverse order is going to be passed against her.

Facts of the case in nutshell:



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2. The respondent herein had filed a suit in O.S.No.32 of 2016

to eject the revision petitioner from the tenanted premises, which had been decreed on 30.11.2017. Pursuant to the decree and judgment, an Execution Petition has been taken out by the plaintiff in E.P.No.143 of 2021. Originally, an Execution Petition was filed before the Sub-Court, Tambaram and later, it was transferred to the Sub-Court, Alandur and renumbered as E.P.No.143 of 2021. In the execution proceedings, an application in E.A.No.1 of 2024 has been taken out to set aside the *ex parte* order and the said application has been dismissed on the ground that the application has been filed only to protract the proceedings.

3. Learned counsel for the revision petitioner would mainly submit that the decree had been passed in the year 2017 and subsequent thereto, there was a compromise between the parties and the revision petitioner also continued to pay the rent. He would further submit that the revision petitioner has not been evicted earlier and only after transfer of the Execution Petition to Alandur, the *ex parte* order came to the knowledge of the petitioner and therefore, he pleaded that the impugned order is liable to



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be set aside.

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4. On perusal of the order of the Trial Court, it is seen that the Execution Petition has been filed before the Sub-Court, Tambaram in the year 2018 itself (E.P.No.47 of 2018) and the judgment debtor was set *ex parte* and delivery had been ordered. There again, the Execution Petition has been transferred to the Sub-Court, Alandur. According to the petitioner, he was set *ex parte* in the latter Court and he filed necessary application within 30 days. When the petitioner was already aware of the proceedings and had not chosen to appear before the Sub-Court, Tambaram in the year 2018 and proceeded *ex parte*, now he cannot take a stand that he has no knowledge about the proceedings.

5. Admittedly, the suit was filed for recovery of possession from the tenant and now, a new ground has been raised as if there was an amicable settlement and the arrears had been paid, which, in the opinion of this Court is beyond the purview of decree and judgment. The revision

N.SATHISH KUMAR,J.,

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petitioner was set *ex parte* in the year 2018 and now, the application has been filed to set aside the *ex parte* order, which cannot be countenanced.

6. Hence, finding no merits in the argument put forth by the learned counsel for the revision petitioner, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2025

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

The Subordinate Judge,
Alandur.

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