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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.562 of 2025

and

C.M.P(MD)No.3043 of 2025

Madathi

...Revision Petitioner/Petitioner/
Respondent/1st Defendant

Vs.

Shanmugathai (Died)

Muruganantham

...Respondent/2nd Respondent/
Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated, 19-12-2024 passed in E.A.No.36 of 2024 in E.P.No.3 of 2024 in O.S.No.57 of 2012, on the file of the District Munsif Court, Sathankulam, Thoothukudi District, by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondents : Mr.S.Ramesh

* * * * *



ORDER

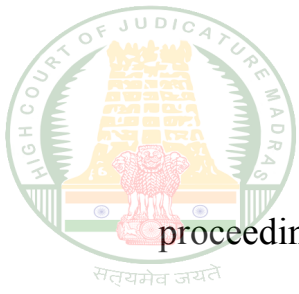
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The first defendant in O.S.No.57 of 2012, on the file of the District Munsif Court, Sathankulam, is the revision petitioner herein.

2.The respondent herein has filed the above said suit for the relief of partition and separate possession. A preliminary decree came to be passed on 20.03.2014. The decree holder had filed I.A.No.590 of 2015, for passing final decree. The final decree was passed on 24.11.2017. Challenging the final decree, the present revision petitioner is said to have filed an appeal in February 2018, with a delay.

3.The condone delay application filed in the first appeal was returned by the appellate Court and it was not re-presented in time. Therefore, the first defendant had filed I.A.No.54 of 2023, to condone the delay in re-presentation. In the said application, the first appellate Court had heard the submissions on either side and posted it for order on 05.04.2025.

4.In the mean time, the decree holder has filed E.P.No.3 of 2024, for taking delivery. During enquiry proceedings, the first respondent had filed E.A.No.36 of 2024, under Order 21 Rule 26 of C.P.C. to stay the execution

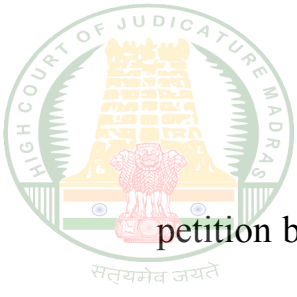


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proceedings on the ground that the first appeal is pending. The said application came to be dismissed by the trial Court. Challenging the same, the present revision petition has been filed.

5. According to the learned Counsel appearing for the revision petitioner, the first appeal has been filed with a delay of two weeks and therefore, the executing proceedings should be stayed pending disposal of the first appeal. However, the learned Counsel appearing for the respondent/decreed holder relying upon the order of this Court in C.R.P.No.2193 of 2024, dated 08.01.2025, had contended that the provision under Order 21 Rule 26 can be invoked only till the order copy is delivered by the Court. In the present case, the order copy has been delivered to the revision petitioner and they have preferred an appeal with a delay. In such circumstances, the trial Court will not have any jurisdiction to invoke Order 21 Rule 26 of C.P.C.

6. The learned Counsel appearing for the respondent herein had contended that though an appeal is said to have been filed by the revision petitioner in February 2018, for the past 7 years, they have not taken any steps to number the first appeal. Only when the execution proceedings were initiated in the year 2024, they have re-presented the condone delay application and filed the stay



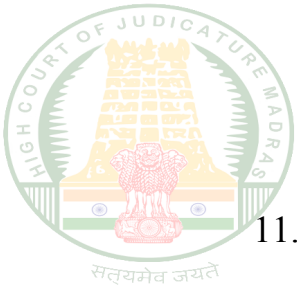
petition before the executing Court. He has further contended that the execution proceedings need not be stayed during pendency of the first appeal which is in the condone delay stage.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The executing Court has proceeded to dismiss the application filed under Order 21 Rule 26 of C.P.C. and has ordered delivery on 19.12.2024. According to the revision petitioner, orders are likely to be passed in the delay in re-presentation application by the first appellate Court on 05.04.2025. In such circumstances, if delivery is effected, it will cause great prejudice.

9.Considering the above said facts, the delivery order shall be kept in abeyance till **30.06.2025**. In case, if the revision petitioner is not able to get any interim orders from the first appellate Court, the executing Court is directed to proceed in accordance with law.

10.The Sub Court, Tiruchendur, is directed to dispose of I.A.No.54 of 2023, on or before **30.06.2025**.



11. With the above said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

27.03.2025

Internet: Yes/No
Index: Yes/No
RJR

To

1. The learned District Munsif, Sathankulam,
Thoothukudi District.

2. The learned Sub Judge, Tiruchendur.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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