

(2014) 11 MAD CK 0450
In the Madras High Court

Case No : C.R.P. (MD) (NPD). No. 93 of 2012 and M.P. (MD) No. 1 of 2012

Minor Parthasarathy

APPELLANT

Vs

Chinnasamy

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (2014) 11 MAD CK 0450

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Judgement

M. Duraiswamy, J.—Aggrieved over the fair and final order passed in I.A.No. 173 of 2010 in unnumbered C.M.A.No. .. of 2010 on the file of the Principal District Court, Dindigul, against E.A.No. 133 of 2010 in E.P.No. 84 of 2005 in O.S.No. 359 of 2000 on the file of the Subordinate Judge, Palani, the petitioners in I.A.No. 173 of 2010 have filed the above Civil Revision Petition.

2. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

3. The first respondent is the defendant/judgment debtor, the second respondent is the plaintiff/decreed holder and the third respondent is the auction purchaser. The plaintiffs filed the suit in O.S.No. 359 of 2000 for recovery of money which was decreed by the trial Court. Pursuant to the decree passed by the trial Court, the plaintiffs filed an execution petition in E.P.No. 84 of 2005 for bringing the property for sale. The property was purchased by the third respondent in the Court auction. Thereafter the revision petitioners, who are the wife and children of the first respondent/judgment debtor have filed an application under Order 21 Rule 90 of the Code of Civil Procedure to set aside the sale. The said application was dismissed by the execution Court, against which they preferred an appeal in C.M.A.No. .. of 2010 with a petition to condone the delay of 110 days in filing the appeal. The said application was dismissed by the lower Appellate Court finding that the revision petitioners have not given acceptable reason for condoning the

delay.

4. A perusal of the affidavit filed in support of the petition, it could be seen that the third petitioner has stated that she was bedridden and that she was not in a position to file the appeal within the period of limitation. The reasoning given by the petitioners can be accepted in the interest of justice. Therefore, being satisfied with the reasons stated in the affidavit filed in support of the petition, I am inclined to condone the delay of 110 days in filing the appeal. Accordingly, the fair and final order passed by the lower Appellate Court in I.A.No. 173 of 2010 is liable to be set aside. Accordingly, the same is set aside. The application in I.A.No. 173 of 2010 in C.M.A.No. ... of 2010 stands allowed.

5. The Principal District Court, Dindigul is directed to number the C.M.A. within a period of one week from the date of receipt of a copy of this order and to dispose the same on merits and in accordance with law within a period of three months thereafter.

6. It is brought to the notice of this Court that by order dated 10.01.2012, this Court while granting interim stay, directed the revision petitioners to deposit the decretal amount together with interest and costs to the credit of O.S.No. 359 of 2000 on the file of the Subordinate Court, Palani.

7. According to the learned Counsel for the revision petitioners, they have complied with the conditional order passed on 10.01.2012 by depositing the decretal amount together with interest and costs. Since the Civil Revision Petition is disposed of today, when a question was put to the learned Counsel for the revision petitioners as to whether they want to withdraw the amount lying to the credit of O.S.No. 359 of 2000 on the file of the Subordinate Court, Palani, the learned Counsel submitted that the amount may be deposited in a Nationalised Bank in a Fixed Deposit till the disposal of C.M.A.

8. Having regard to the submissions made by the learned Counsel on either side, I direct the Subordinate Court, Palani to deposit the amount, deposited by the revision petitioners, in a Nationalised Bank in a Fixed Deposit initially for a period of one year and the parties are at liberty to withdraw the amount after the disposal of C.M.A. It is also made clear that the deposit made by the revision petitioners shall not prejudice the mind of the lower Appellate Court while disposing of the appeal in C.M.A. filed by the revision petitioners.

9. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.