

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**

**PG.D.PM/IR.,**

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Thursday, the 8<sup>th</sup> Day of February 2024

**E.A. No.2/2023**

**in**

**E.P. No. 224/2023**

**in**

**O.S. No. 35/2010**

K. Renganathan

... Petitioner / Defendant / Respondent

**-Vs-**

1. N. Sivaji (Died)

... Respondent / Plaintiff

2. Eswari

3. S. Suganeswaran

4. Minor. Kiruthik Kumar

... Repondents / Petitioners

( The 4<sup>th</sup> minor respondent is represented through his guardian Tmt. Eswari)

This petition came on 03.02.2024 before this court for final hearing in the presence of Thiru. M. Vinoth Kumar, Advocate for the petitioner, 1<sup>st</sup> respondent died, and of Tvl. V. Arumugam, C. Kumaresan, R. Sangeetha, Advocates for the Respondents 2 to 4 and after having heard the arguments of both sides and on perusal of records this Court delivers the following :

**ORDER**

1. Petition filed by the petitioner / Respondent Under Order 21, Rule 29 and Section 151 of C.P.C.,

2. **Contentions of the petitioner:**

The petitioner has contented that, the respondent has filed the E.P. with false allegations purposely and the same is contented by filing a detailed counter. He has filed a petition to set aside the exparte decree along with petition to condone the delay in filing the said petition. In the mean while, the 1<sup>st</sup> plaintiff died on 08.08.2016 and so the LR's of 1<sup>st</sup> plaintiff had to be impleaded in the petition to set aside the exparte decree and so has filed petition in I.A. No. 5/2023 and the same is pending. The petition to condone the delay is numbered as I.A. No. 6/2023 and the petition to set aside the exparte decree is numbered as I.A. No. 7/2023 and they are pending. The copies are also served to the respondents. The petitioner has a good case in the suit. Hence, he has filed the petition to stay the E.P. till orders are passed in the said I.A.'s. Unless, the E.P. is stayed, the petitioner would be put to irreparable loss and hardships. So, he prays to stay the proceedings in E.P.

3. **Contention of the Respondents:**

The respondents have contended that the E.P. is filed for execution of the

decree in O.S. No. 35/2010 obtained by late. Sivaji, the 1<sup>st</sup> plaintiff. No objections were filed by this petitioner even after receiving sale notice in the E.P. He has filed petition to set aside the exparte decree dated 06.08.2015 in the above suit along with petition to condone the delay of 2926 days. These petitions alone are pending and no other suit or separate suit is pending. The petitioner has no locus standi to invoke Order 21 Rule 29 of C.P.C and this petition is abuse of process of law. He has not come forward with clean hands and if the petition is allowed, the respondents would be prejudiced.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Heard both sides.

6. **Answer to the point :**

The reason for invoking the presumption of Order 21 Rule 29 of C.P.C. by the petitioner is that he has filed petitions to set aside the exparte decree along with petitions to condone the delay in filing the same. He has also filed petition to implead the LR's of deceased 1<sup>st</sup> plaintiff and that they are pending. These are not denied by the respondent.

7. On perusal of the records of O.S. No. 35/2020, it is found that I.A. No. 5/2023,

I.A. No. 6/2023 and I.A. No. 7/2023 are filed by petitioner and are pending for service of notices to the proposed parties. But, the counsel for the respondents has received copy of these petitions and has made endorsement for seeking time for counter. Hence, when the petition to set aside the ex parte decree is pending, it would be against interest of justice to proceed with the execution proceedings. An opportunity must be given to the petitioner to contest the said petitions and until the disposal of these petitions, the execution proceedings must be stayed.

8. However, in view of the mandate of proviso to Rule 29 of Order 21 of CPC and since the decree is for payment of money, such stay shall be on condition that the petitioner shall deposit the cost of the decree viz. Rs.1,60,533/- into court to show his bonafide in pursuing the said petitions. This point is decided accordingly.

**In the result**, this petition will be allowed on deposit of Rs.1,60,533/- being the suit costs into court on or before 21.02.2024. Failing which the petition shall stand dismissed automatically.

This order written by me in my own hand, typed by the Steno-Typist, corrected and pronounced in the Open Court on this day of 8<sup>th</sup> February 2024.

**Additional District Judge,  
Dindigul.**