



C.R.P.(MD)No.3168 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3168 of 2023

T.B.Srinivasan

... Petitioner/
Petitioner/
Decree holder

Vs.

T.Muruganandam

... Respondent/
Respondent/
Judgment Debtor

Prayer : This Civil Revision Petition filed under Section 115 C.P.C., to set aside the order dated 21.03.2023 ordering notice to respondent in E.P.No. 38 of 2023 in O.S.No.445 of 2015 on the file of the Court of the First Additional District Munsif/Executing Court, Tiruchirappalli and allow the civil revision petition.

For Petitioner : Mr.S.C.Herold Singh

ORDER

The Civil Revision Petition has been filed challenging the order of the Executing Court in ordering notice to the respondent/judgment debtor.



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2. The learned counsel appearing for the revision petitioner/decreed holder would submit that the revision petitioner/decreed holder has filed a suit in O.S.No.445 of 2015 for recovery of possession and the suit was decreed on 17.11.2022, that the revision petitioner/decreed holder has then laid an execution petition in E.P.No.38 of 2023 and that since the execution petition was laid within two years from the date of judgment and decree, the trial Court as per Order 21 Rule 22 C.P.C. should have passed an order for delivery but instead the Executing Court has ordered for issuance of notice.

3. At the outset, it is pertinent to note that it is not mandatory on the part of the Executing Court to pass orders without issuing notice, if the execution petition is laid within two years from the date of judgment and decree. More importantly, in the present case, the respondent/judgment debtor has remained *ex parte* and the trial Court has passed the *ex parte* judgment and decree on 17.11.2022.

4. Considering the above, the Executing Court has rightly decided to issue notice to the respondent/judgment debtor before ordering the relief claimed in the execution petition.



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5. Since there is no legal mandate for passing orders directly, the impugned order directing issuance of notice cannot be found fault with. Hence, this Court concludes that the revision is absolutely devoid of merit and the same is liable to be dismissed.

6. In the result, this Civil Revision Petition is dismissed. No costs.

06.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The First Additional District Munsif/Executing Court,
Tiruchirappalli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
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