

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1871 of 2015
and M.P.No.1 of 2015

Mr.S.Sarath Kakumanu

... Petitioner

Vs.

1.Mr.Veerappan Arunachalam

2.Mrs.Priya Asokan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the interim application for hearing in E.A.SR.No.41092 of 2014 in E.P.No.1191 of 2013 in O.S.No.9974 of 1992 on the file of the IX Assistant Judge, City Civil Court, Chennai dated 05.01.2015.

For Petitioner : Mr.G.R.Lakshmanan

For Respondents : Mr.P.K.Rajagopal

ORDER

Aggrieved over the order passed in E.A.SR.No.41092 of 2014 in E.P.No.1191 of 2013 on the file of the IX Assistant Judge, City Civil Court, Chennai, the judgment debtor has filed the above Civil Revision Petition.

2.Pursuant to the decree passed in the suit in O.S.No.9974 of 1992,

the legal representatives of the decree holder filed an Execution Petition in E.P.No.1191 of 2013. The judgment debtor filed an application under Section 47 of the Civil Procedure Code disputing the petitioners' status as the legal representatives of the deceased decree holder.

3. According to the learned counsel for the petitioner, the Execution Court, even without hearing the arguments on the side of the judgment debtor, returned the application as not maintainable even without numbering the same.

4. On a perusal of the order passed by the Execution Court dated 05.01.2015, it is clear that the Execution Court has gone into the merits of the matter, however, returned the application as not maintainable. When the Execution Court finds that the application is not maintainable, it should not have gone into the merits of the case. If it had gone into the merits, the Execution Court should have numbered the application and after hearing both sides, should have passed the order.

5. This Court has repeatedly observed that the Execution Court should not pass orders in the applications even without numbering the same.

6. In the case on hand, it is brought to the notice of this Court, convincingly, that the application was not argued by the learned counsel for the petitioner/judgment debtor. The learned counsel also produced the Diary extract wherein on 12.11.2014, the matter was adjourned to 20.11.2014 and on 20.11.2014, the matter was again adjourned to 08.12.2014. On 08.12.2014, it was recorded by the Execution Court that "Orders not ready. Call on 05.01.2015". On 05.01.2015, the Execution Court had passed the impugned order. From the above, it is clear that the petitioner might not have had an opportunity to advance his arguments. In the absence of any argument advanced by the learned counsel for the petitioner/judgment debtor, the Execution Court had returned the application as not maintainable. In any event, the order passed by the IX Assistant Judge, City Civil Court, Chennai in E.A.SR.No.41092 of 2014 is erroneous.

7. In these circumstances, the order passed on 05.01.2015 in E.A.SR.No.41092 of 2014 in E.P.No.1191 of 2013 is set aside and the matter is remanded to the IX Assistant Judge, City Civil Court, Chennai for fresh consideration. I direct the IX Assistant Judge, City Civil Court, Chennai to number the application in E.A.SR.No.41092 of 2014 and after giving opportunity to both the parties, dispose of the same, on merits and in

accordance with law, within three months from the date of receipt of a copy of this order.

8. Since I am remitting the matter to the IX Assistant Judge, City Civil Court, Chennai, I am not going into the merits of the case, which would affect the case of both the parties before the Execution Court.

9. With this observation, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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22.07.2015

To

The IX Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
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