

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(NPD)No.3870 of 2015 and
M.P.No.1 of 2015

Pushparaj

... Petitioner

vs.

Ganesan

...Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal dated 11.08.2015 passed in E.A.No.98 of 2015 in E.P.No.230 of 2014 in O.S.No.76 of 2012 on the file of I Additional Subordinate Judge, Cuddalore.

For Petitioner : Mr.I.Abrar Mohammed Abdullah

For Respondent : Mr.R.Gururaj

ORDER

The revision petitioner is the defendant in O.S.No.76 of 2012 on the file I Additional Sub-Judge, Cuddalore. It is a suit for specific performance. In the suit, the revision petitioner was represented by Power Agent.

2. According to the learned counsel for the petitioner, the Power Agent did not pursue the suit and hence, an ex parte decree dated 10.06.2013 was passed in O.S.No.76 of 2012. It is stated that I.A.No.44 of 2015 was filed to condone the delay in filing the application to set aside the ex parte decree.

3. While I.A.No.44 of 2015 is pending, the respondent/plaintiff is taking steps to execute the decree by filing E.P.No.230 of 2014. Hence E.A.No.98 of 2015 in E.P.No.230 of 2014 was filed by the petitioner to stay the execution proceedings. The Trial Court passed an order dated 11.08.2015 rejecting the said E.A.No.98 of 2015. Challenging the said order, the petitioner has come up with this petition.

4. Heard both sides.

5. It is submitted by the learned counsel for the petitioner that the petitioner suffered an ex parte decree due to the non-appearance of the power agent. Now the revision petitioner himself is prosecuting the matter and hence, he filed I.A.No.44 of 2015 to condone the delay in filing the application to set aside the ex parte decree.

6. In such circumstances, I am of the view that Executing Court shall not proceed with the matter until I.A.No.44 of 2015 is disposed of. If I.A.No.44 of 2015 is allowed, then, it is needless to state that proceedings in Execution Petition shall be ceased and ultimately, the Executing Court cannot proceed until a decision is made in O.S.No.76 of 2012. However, if I.A.44 of 2015 is dismissed, the Executing Court could proceed with EP.

7. In the result, the Civil Revision Petition is disposed of setting aside the order dated 11.08.2015 made in E.A.No.98 of 2015 and the Executing Court shall not proceed until I.A.No.44 of 2015 is decided by the concerned Court. The I Additional Sub-Court, Cuddalore is directed to dispose of I.A.No.44 of 2015 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

05.10.2015

svki

To

The I Additional Subordinate Judge,
Cuddalore.

D.HARIPARANTHAMAN,J.,

svki

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