

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2015

CORAM :

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.R.P.No.346 of 2007

D.Murali

... Petitioner

Vs.

1.K.Ramaraj
2.C.B.Cicy
3.C.B.Prema
4.Thilagavathi @ Chitra
5.C.B.Anthony
6.C.B.Charles
7.C.B.Philomina

... Respondents

Prayer : This Civil Revision petition is filed under Section 115 CPC against the fair and decreetal order of the learned II Additional Subordinate Judge, Coimbatore dated 31.07.2006 in Unnumbered CFR.No.24653 in OS.No.418 of 2005.

For Petitioner : M/s.V.Nicholas.

For Respondents : Mr.K.Ramaraj for R1.
R2 died.
Mr.K.Krishnan for Mr.A.Sivaji
for R3 to R7.

O R D E R

The plaintiff/deed holder who is the applicant in EA.CFR.No.24653 in OS.No.418 of 2005 is the revision petitioner herein.

2.The petitioner herein filed a suit in OS.No.418 of 2005 on the file of III Additional Subordinate Judge, Coimbatore for specific performance of the suit sale agreement against the first defendant or the defendants 2 to 7 as one group. The suit was decreed exparte on 31.01.2006 by the then III Additional Subordinate Judge, Coimbatore and the judgment reads as follows :

"Suit for Specific performance directing the 1st defendant or defendants 2 to 7 as one group to execute the sale deed in favour of the plaintiff jointly and severally and for costs of the suit.

Proof affidavit filed. Ex.A1 to A6 marked. Claim proved. Hence suit is decreed as prayed for with cost."

3.However as per clause I of the decree the plaintiff is directed to pay the balance sale consideration of Rs.10,000/- within two months from the date of decree (i.e) 31.01.2006. The plaintiff/decreed holder made copy application for getting the certified copy of the decree and judgment and copy of deposition of PW1 and the certified copies of the documents sought for were furnished to the plaintiff/decreed holder on 15.06.2006. After getting the copies, the plaintiff/decreed holder filed EP for directing the respondents to execute the sale deed. The EP was filed along with an application to extend the time for deposit of balance sale consideration and lodgment schedule for depositing sum of Rs.10,000/-. While the EP was filed before the II Additional Subordinate Court, Coimbatore which is the executing court, the petition for extension of time in EA.CFR.No.24653 was also filed before the same II Additional Subordinate Court/Executing Court, Coimbatore. Both the petitions were filed on 11.07.2006. The II Additional Subordinate Court, Coimbatore/execution court rejected the petitions filed under Section 22 and 28 of Specific Relief Act read with 148 and 149 of CPC on the ground that the court which passed the decree and the executing court are not one and the same and the power to extend the time is vested with the court which passed the decree and not with the executing court. The executing court consequentially returned the execution petition. Aggrieved against the order passed in the petition for extension of time the present civil revision petition came to be filed before this Court.

4.The learned counsel for the petitioner would question the correctness of the order so passed by the executing court on the following two grounds : (i)The court has committed serious error in not exercising its discretionary power for granting extension of time and (ii)the inability of the petitioner to pay the balance sale consideration of Rs.10,000/- is due to non supply of certified copies by the Court concerned.

5.Heard the rival submissions made on both sides and perused the records.

6.First of all, the trial Court/III Additional Subordinate Court, Coimbatore has not granted any time limit for making payment of balance sale consideration in its judgment dated 31.01.2006. The judgment simply reads that "proof affidavit filed. Ex.A1 to A6 are marked. Claim is proved. Hence suit is decreed with costs". The reading of the judgment would reveal that the judgment is not passed in the manner known to law, notwithstanding time and again this Court deprecated the practice of passing one such decree, though exparte in nature. The plaintiff/decreed holder is given two months time for deposit of balance sale consideration from the date of judgment (i.e,) on 31.01.2006 only in the decree. That means, the decree is

not in consonance with the judgment passed by the trial court.

7. Be that as it may, the judgment was passed on 31.01.2006 and the time granted for payment of balance sale consideration is two months from the date of judgment (i.e.,) 31.01.2006, but no copy application was filed either on the same day or immediately thereafter and the copy application was, as per the court records filed on 02.03.2006. Though it is contended herein that the copy application was filed on 07.02.2006, but the same was entertained only on 02.03.2006, such contention is not substantiated herein. The copy of the judgment and decree was furnished on 15.06.2006. Had the plaintiff/decreed holder been bonafide in complying with the decree he would have immediately after receipt of the copy on 15.06.2006 deposited the amount into Court, wherein he did not deposit the amount till 10.07.2006. Even in the petition seeking extension of time, no specific time limit is sought for and the relief sought for is very vague (i.e.) seeking extension of time till such time to enable the petitioner to file execution petition accompanied by lodgment schedule.

8. Above all, the petition was not filed before the trial court, which passed the decree which is vested with the jurisdiction to extend the time limit and the petition for extension of time is filed before different court (i.e.,) executing court which has no jurisdiction to grant extension of time.

9. The validity of such ground in rejecting the petition for extension of time by executing court is fortified by the Hon'ble Supreme Court in the judgments reported in (i) AIR 1999 SC 918 - V.S.Palanichamy Chettiar Firm V. C. Alagappan and another and (ii) 2015 (2) CTC 559 - PR. Yelumalai V. N.M. Ravi. While the first case reiterated the principle that the executing court can entertain the application for extension of time only when the trial court and the executing Court are one and the same, the ratio laid down in the judgment second cited above is that as the decree for specific performance was self operative, on any failure to comply with the terms of the decree, the suit stood dismissed. In the case second cited above, the judgment and decree was passed on 15.02.2007 granting one month time for depositing balance sale consideration from the date of the decree, the decree was signed on 27.02.2007 and the period of one month from 27.02.2007 ended on 26.03.2007. There was extension of time granted till 26.05.2007 and as 26.05.2007 was not a working day for the Court and as 27.05.2007 was Sunday, the balance sale consideration was paid not on the reopening day on 28.05.2007, but deposited on the next day on 29.05.2007. The Supreme Court on the failure of the decree holder to deposit the amount on the reopening day after expiry of two months, held that the plaintiff/buyer has clearly defaulted and the decree was self operative and the suit stood dismissed for non-compliance of the decree, regarding the time of depositing as well as the mode of payment. The apex court has in para 11 of its judgment referred to

its earlier judgment reported in 1989 (4) SCC 403 - Johri Singh V. Sukh Pal Singh and others, wherein it is clearly laid down that the power to extend the time fixed by the court is only discretionary and the Court is entitled to take into account the conduct of the party praying for such extension.

10. In my considered view, the same reasoning is applicable to the facts of the present case. That being the legal position, the executing Court rightly rejected the petition stating that the decree holder ought to have approached the trial court and not the executing court which are not one and the same court. This court hence finds no infirmity or irregularity in the order so passed by the executing court, warranting any interference by this Court.

11. In the result, the Civil Revision Petition stands dismissed. No costs. M.P.No.1 of 2007 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The II Additional Subordinate Judge, Coimbatore.
2. The III Additional Subordinate Judge, Coimbatore.

+1 cc to Mr.A.Sivaji, Advocate, sr.20864
+1 cc to Mr.V.Nicholas, Advocate, sr.21256

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