

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.4365 of 2010

Pulavar S.Thiagarajan

...Petitioner

Vs.

1. The Principal Judge,
City Civil Court,
Chennai 600 104.

2. The Registrar,
City Civil Court,
Chennai 600 104

3. Velmurugan

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India pleased to issue a writ of certiorarified mandamus or any other appropriate order or direction call for the records the 1st respondent by its proceedings Dis.No.520/2010/EII dated 12.01.2010 with connected records and quash the same and directing the 1st respondent or appoint any other person for conducting a fresh enquiry on the petitioner complaint dated 03.09.2007 and file a report.

सत्यमेव जयते

For Petitioner : Mr.K.Venkateswaran

For Respondents : Mr.E.K.Kumaresan for R1 and R2
Mr.M.Radhakrishnan for R3

ORDER

The prayer in the writ petition is for writ of certiorarified mandamus call for records of the 1st respondent by its proceedings Dis.No.520/2010/EII dated 12.01.2010 with connected records and quash the same and directing the 1st respondent or appoint any other person for conducting a fresh

enquiry on the petitioner complaint dated 03.09.2007 and file a report.

2. It is stated that the second respondent to enquire into the alleged action of one of the Court staff, who according to the petitioner had connived with the opposite party with regard to O.S.No.12758 of 1996 and thereby, the petitioner suffered an order where exparte decree passed against the third respondent, was stayed.

3. The said complaint was referred to the second respondent to conduct a discreet enquiry, pursuant to which, the second respondent, by communication dated 20.09.2007, had directed the petitioner to appear for an enquiry on 03.10.2007. Thereafter, the second respondent, enquired the petitioner and gone through the entire case papers pertaining to the said suit, and with regard to the alleged complaint made by the petitioner against the third respondent and the Court staff.

4. After having gone through the records and complaint, and after completing the enquiry, the second respondent had filed a detailed report on 10.01.2008, whereby the second respondent, after having recorded the Judicial orders passed by the learned Judge, namely the IV Assistant Judge, City Civil Court, Chennai in the said suit by way of interlocutory orders, has ultimately concluded that there are no irregularities done by the staff and if there was any grievance against the Judicial order, the complainant has to prefer appeal against the order in I.A.No.7534 of 2007. The Enquiry Officer/second respondent further stated that the Presiding Officer has clearly stated that the delay in placing the petition to set aside the exparte decree/order will be dealt with in the main petition. Ultimately the second respondent has found that there are no irregularities done by the staff of IV Assistant Judge, City Civil Court, Chennai with the connivance of the judgment debtor Mr.N.Velmurugan, the third respondent.

5. Pursuant to the said detailed report which was submitted by the second respondent after the enquiry, the second respondent passed an order dated 07.02.2008 whereby the second respondent has stated that the first respondent found no material to proceed against the individual as per enquiry report and therefore the same was directed to be conveyed and accordingly, it was informed to the petitioner.

6. Thereafter, at the request of the petitioner, a copy of the enquiry report of the second respondent dated 10.01.2008, was supplied to the petitioner on 30.04.2008. After receipt of the said enquiry report, the petitioner has once again made a

request to the first respondent on 20.11.2009 requesting the first respondent to reopen the case once again and take action against their erring Court staff. Only on the said request of the petitioner to reopen the case, administratively it has been turned down by the first respondent, by his order dated 12.01.2010, which is impugned in this writ petition.

7. Heard both sides and perused the materials available on record.

8. Learned counsel for the petitioner would strenuously submit that though an exparte decree was already passed, a petition to set aside an order was filed by the third respondent and even though the Court staff is responsible for the Court records, it was not brought to the notice of the Court and the said petition was not put up before the learned Judge for decision. Only in those circumstances, subsequent petition was filed to stay the operation of the exparte decree passed in the said suit between the petitioner and the third respondent. All these had happened only because of the inaction or action with the connivance by the Court staff with the third respondent and that was requested to be enquired by the Enquiry Officer, who has not enquired in proper perspective and these factors have not been taken into account in the enquiry report and therefore, the petitioner had requested the first respondent to reopen the case. Therefore, there is an exparte decree for the petitioner and he sought to reopen the case administratively and to enquire the same and that request has been turned down by the first respondent which is erroneous and in that view of the matter, impugned order cannot stand and therefore it is liable to be set aside and quashed. He prayed that a direction may be given to the first respondent to enquire into the matter afresh.

9. The said submissions have been rebutted by Mr.E.K.Kumaresan, learned counsel for the respondents 1 & 2. He submits that the orders referred to in I.A No.738 of 2007 and the subsequent order in IA SR.No.37232 of 1998, are all judicial orders passed by the Court under the provisions of the Code of Civil Procedure. When such Judicial orders are passed, they are subject to an appeal or revision as the case may be and without taking recourse to the said action which are very well available to the petitioner, he has come out with the present writ petition, that too, after having obtained an order from the first respondent based on the detailed enquiry report from the second respondent. Therefore, this writ petition is not sustainable and therefore, the same is liable to be dismissed.

10. The rival submissions made by the respective learned counsel have been considered.

11. Whatever be the veracity of the complaint given by the petitioner against the third respondent and the Court staff, the second respondent after having conducted a detailed enquiry in the matter has given a detailed report wherein he found no irregularities done by the staff, based on which, an order dated 07.02.2008 has been passed. Thereafter, the petitioner has once again filed a representation on 20.11.2009, making a request to reopen the issue and to enquire the matter afresh and that request has been rejected by the impugned order. As has been rightly pointed out by the learned counsel for the respondents 1 and 2 that those orders passed by the Court below are judicial orders as against which, on merits, the petitioner can very well file appeal or revision in accordance with law, if he is so advised. Instead, he had filed a complaint against the third respondent and a Court staff with an allegation with regard to replacing of papers before Court. However that complaint had been given due credit and a detailed enquiry was conducted and a report to that effect was also filed. Thereafter, it is not justified for the petitioner to seek for reopening of the enquiry. If at all the petitioner has any grievance as against the judicial orders passed by the Court below the remedy open to the petitioner under the law is to prefer an appeal or to file a revision. There is no further justification for the petitioner to seek further fresh enquiry on the issue. There is no illegality in the order passed by the first respondent which is impugned herein.

Therefore writ petition is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

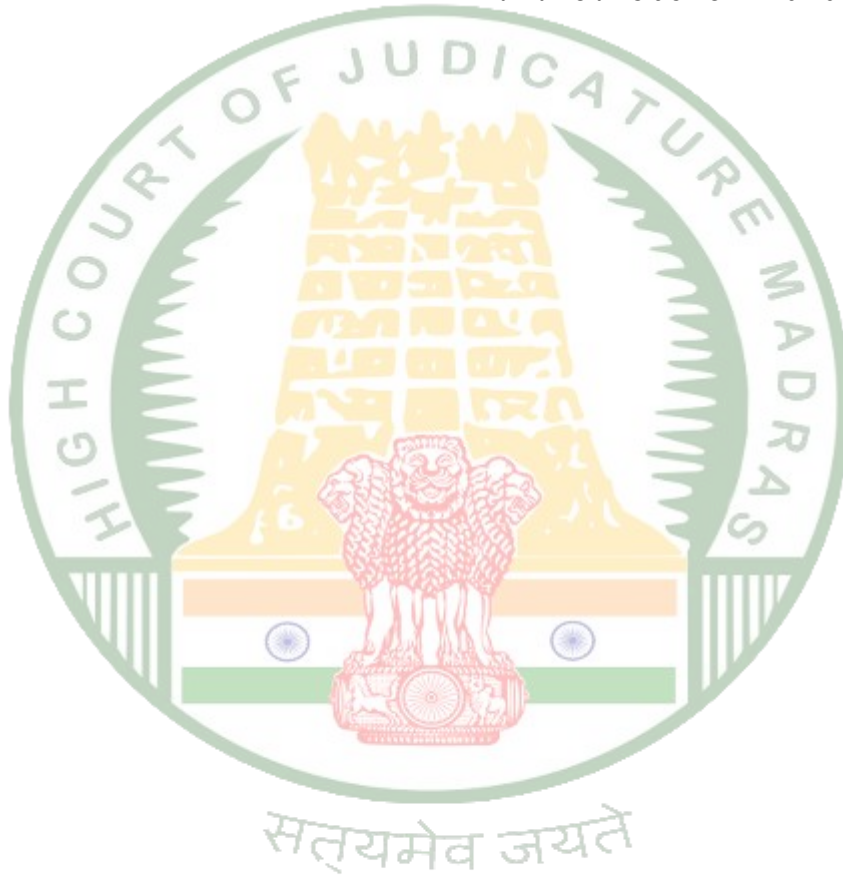
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+1cc to Mr.K. Venkateswaran, Advocate, S.R.No.61990
+1cc to Mr.M. Radhakrishnan, Advocate, S.R.No.61887

vgi (CO)
md(30/11/2016)

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