

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

Review Application No.43 of 2015

in

C.R.P. No.1958 of 2004

1. Selvaraj
2. Raja
3. Ragu
4. Periyannayagam

.... Petitioners

vs

Tmt.Meenakshiammal

.... Respondent

Review Application filed under Section 114 r/w Order 47 Rule 1 of Civil Procedure Code to review the Orders in CRP (NPD) No.1958 of 2004 dated 18.07.2014.

For Petitioners : Mr.S. Kamadevan

For respondent : Mr.K.A. Vimal Kumar

ORDER

Heard Both sides.

2. The respondent /auction purchaser has filed an application under Order XXI Rule 95 of the Civil Procedure Code in the Execution Petition in E.P.No.80 of 2002 on the file of Principal District Munsif Court, Ariyalur for taking possession of the property, purchased by her.

3. The Executing Court dismissed the application, finding that the application, filed under Order XXI Rule 95 of the Civil Procedure Code, was after a period of one year. Aggrieved over the same, the respondent/auction purchaser filed a Civil Revision Petition in CRP (NPD)No.1958 of 2004. This Court, by Order dated 18.07.2014, dismissed the Civil Revision Petition and confirmed the order passed by the Executing Court.

4. While dismissing the Civil Revision Petition, in Paragraphs 15 and 16 of the order, this Court recorded the submissions made by

the learned counsel on either side with regard to the filing of the suit for recovery of possession by the auction purchaser, excluding the period, during which, the Civil Revision is pending before this Court. Ultimately, this Court gave liberty to the respondent/auction purchaser to file a separate suite for recovery of possession on the basis of the court auction sale and also observed the period of pendency of Civil Revision Petition should be excluded if a separate suit is filed by the revision petitioner within one month from the date of receipt of a copy of the order.

5. While dismissing the Civil Revision Petition, this Court also took into consideration Article 134 of the Limitation Act and ultimately came to the conclusion that the application, filed under Order XXI Rule 95 of the Civil Procedure Code, is out of time. The Civil Revision Petition was filed by the auction purchaser herself and even during the pendency of the civil revision petition, the auction purchaser could have filed a suit for recovery of the possession within the period of limitation. Mere pendency of the Civil Revision Petition, filed by the auction purchaser, cannot be taken to her advantage and for calculating the period of limitation, the pendency of the Civil Revision

Petition cannot be excluded.

6. Had the Judgment Debtor filed a Civil Revision Petition and obtained a stay, atleast in that case, the contentions raised by the auction purchaser, may be accepted for excluding the period of pendency of the Civil Revision Petition for calculating the period of limitation. When there is no bar for filing a suit during the pendency of the Civil Revision Petition, the liberty, given by this Court for filing the suit, excluding the period of pendency of the Civil Revision Petition, is an error apparent on the face of the record. Hence, the findings in paragraph Nos.15 and 16 of the order alone are to be modified.

7. In view of the submissions made by the learned counsel for the petitioner, paragraph-15 of the order, it should be read as follows:

"15. In view of the submissions made by the learned counsel for the petitioner, for excluding the period, during which the civil revision petition was pending, for calculating the period of limitation for filing a separate

suit for recovery of possession, it is made clear that it is open to the auction purchaser to file an appropriate suit, if he is so entitled to, in law.”

Paragraph 16 of the order, it should be read as follows:

“16. In the result, the Civil Revision Petition is dismissed. No costs.”

8. In the other aspects, the order passed by this Court in the Civil Revision Petition on 18.07.2014 shall remain unaltered.

9. With the above observations, the Review Application is disposed of. No costs.

06-07-2016

sr

Index:no
website:yes

To

The Principal District Munsif Court, Ariyalur

M. DURAISWAMY,J.,

sr

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