

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1124 of 2016  
and C.M.P.No.6169 of 2016

S.Mohammed Ali Jinnah

... Petitioner

Vs.

M.Gnanam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 01.03.2016 made in I.A.No.3296 of 2016 in O.S.No.6976 of 2013 on the file of the II Assistant City Civil Judge, Chennai.

For Petitioner : Mr.R.Rajaramani

For Respondent : Mr.S.Karthik Ganesh

**ORDER**

Challenging the order passed in I.A.No.3296 of 2016 in O.S.No.6976 of 2013 on the file of the II Assistant Judge, City Civil Court, Chennai, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.6976 of 2013 for recovery of possession and for mesne profit.

3. Since the defendant failed to appear before the trial Court, the trial Court passed an ex parte decree on 06.11.2014. Pursuant to the decree granted in O.S.No.6976 of 2013, the plaintiff filed an Execution Petition in E.P.No.3283 of 2015. Even in the Execution Petition, the defendant remained absent and hence, he was set ex parte in the execution proceedings. Thereafter, the defendant filed an application before the Executing Court to set aside the order with a delay of 61 days.

4. The learned counsel appearing on either side submitted that the said application is pending before the Executing Court. Simultaneously, the defendant also filed an application in I.A.No.784 of 2016 to condone the delay of 331 days in filing the petition to set aside the ex parte decree. The defendant also filed an application in I.A.No.3296 of 2016 in O.S.No.6976 of 2013 to stay all further proceedings in E.P.No.3283 of 2015 pending disposal of the petition under Order 9 Rule 12 of the Civil Procedure Code, along with an application for condoning the delay in setting aside the ex parte decree.

5. On a perusal of the petition filed in I.A.No.3296 of 2016, it could be seen that the defendant had filed the application under Order 21 Rule 26 & 28 of the Civil Procedure Code read with Section 151 of the Civil Procedure

Code. The trial Court granted interim stay in the said application. Challenging this order, the plaintiff has filed the above Civil Revision Petition.

6.The learned counsel appearing for the petitioner/plaintiff submitted that the trial Court ought not have granted stay in the application filed by the defendant under Order 21 Rule 26 & 28 of the Civil Procedure Code and the said provision is applicable only to the execution proceedings.

7.The learned counsel appearing for the respondent/defendant submitted that since the defendant had also mentioned Section 151 of the Civil Procedure Code, quoting of wrong provision in the petition may be condoned.

8.It is settled position of law that Order 21 Rule 26 & 28 of the Civil Procedure Code are applicable only to the execution proceedings and not to Original Suits.

9.It is brought to the notice of this Court by the learned counsel on

either side that the plaintiff had already filed his counter in I.A.No.784 of 2016 and also in I.A.No.3296 of 2016.

10.The learned counsel appearing for the respondent/defendant submitted that the respondent would file an application before the trial Court for amending the petition by deleting the provision Order 21 Rule 26 & 28 of the Civil Procedure Code on Monday (i.e.) 18.07.2016.

11.The learned counsel appearing for the petitioner has no objection for allowing such an application being filed by the respondent/defendant on Monday (i.e.) 18.07.2016.

12.Further, it was brought to the notice of this Court that the trial Court had posted the matter for further hearing on 09.08.2016.

13.Since the matter is pending for a long time, I direct the II Assistant Judge, City Civil Court, Chennai to advance the hearing of the petition to Monday (i.e.) 18.07.2016, on an application being filed by the respondent/defendant for advancing the hearing. I further direct the trial Court to allow the application for amendment for deleting the provision Order 21 Rule 26 & 28 of the Civil Procedure Code in the petition. Further, I

direct the II Assistant Judge, City Civil Court, Chennai to dispose of the application in I.A.No.784 of 2016 on or before 02.08.2016.

14.Since there is no Presiding Office in II Assistant City Civil Court, Chennai, I direct the V Assistant Judge, who is In-charge of the II Assistant Court, to dispose of the application in I.A.No.784 of 2016, on merits and in accordance with law, on or before 02.08.2016.

15.With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No

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Internet : Yes

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**Note: Issue order copy today itself.**

To

1.The II Assistant City Civil Judge,  
Chennai.

2.The V Assistant City Civil Judge,  
Chennai.

**M.DURAIWAMY,J.**  
va

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**15.07.2016**