

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.1135 of 2016

Chidambara Mudaliar
S/o.Ramanuja Mudaliar

=

.. Petitioner

Vs

1.Chandrasekaran
S/o.Padmanabhan

2.Ramakrishnan
S/o.Padmanabhan

3.Seenu
S/o.Padmanabhan

4.The State of Tamil Nadu
Rep. by the District Collector,
Thiruvannamalai District.

5.The Tahsildar
Polur Taluk,
Thiruvannamalai District.

6.The General Manager
Dharani Sugar Mill,
Kuraipoondi, Polur Taluk,
Thiruvannamalai District.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to pass an order of early disposal of the Execution Petition No.19 of 2009 in O.S.No.152 of 2003 on the file of the District Munsif Court, Polur, Thiruvannamalai District and allow the Civil Revision Petition.

For Petitioner

:Mr.S.Gunaseelan

ORDER

This Civil Revision Petition has been filed by the decree holder/plaintiff seeking directions to the Executing Court for early disposal of the Execution Petition in E.P.No.19 of 2009 in O.S.No.152 of 2003 on the file of the District Munsif Court, Polur, Thiruvannamalai District.

2. The suit in O.S.No.152 of 2003 (for recovery of possession) has been decreed on 14.09.2007. The suit is of the year 2003. The majority of the entries found in the execution petition are the entries relating to orders being awaited from Appellate Forum.

3. The entries in the Execution Petition starting from 13.11.2012 to 30.10.2014 reads "production of order copy". The entry in the docket order dated 09.01.2015 reads, await orders from the Hon'ble Supreme Court.

4. It is submitted by the learned counsel for the revision petitioner that even though his client succeeded in the Second Appeal in S.A.No.202 of 2009 (filed by the respondents 1 to 3 herein) before this Court, he is not able to get his possession due to the unwarranted adjournments sought by the respondents.

4.1. It is also contented that the judgment debtors/respondents without filing any proof for having filed S.L.P.No.38204 of 2014 before the Hon'ble Supreme Court, had sought for unnecessary adjournments, by filing a petition, stating that S.L.P is pending before the Hon'ble Supreme Court.

4.2. Mere filing of appeal or revision will not amount to automatic stay of the proceedings. At this juncture, it will be relevant to refer to Order 41 Rule 5 of C.P.C., which reads hereunder :

5.Stay by Appellate Court – (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[Explanation – An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree

-Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule(1) or sub-rule(2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule(3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

5. It is represented by the learned counsel for the revision petitioner that the revision petitioner/decreed holder has filed a memo stating that no Special Leave Petition in S.L.P.No.38204 of 2014 is pending before the Hon'ble Supreme Court.

5.1. At least after filing of the memo by the decreed holder, that no such Special Leave Petition is pending before the Hon'ble Supreme Court, the Executing Court should have passed orders in the Execution Petition.

6. Under such circumstances, the decreed holder is justified in praying for the speedy disposal of the Execution Petition. The Executing Court is directed to dispose of the Execution Petition within a period of one month from the date of receipt of a copy of this order.

7. With the above directions, this Civil Revision Petition stands disposed of. No costs.

11.04.2016

ds

To:
The District Munsif Court,
Polur, Thiruvannamalai District.

S.VIMALA,J.

ds

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