



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.98 of 2016

Shanmuganathan .. Petitioner
Vs.

Irulappan .. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the learned District Munsif cum Judicial Magistrate, Keeranur to dispose of E.P.No.27 of 2011 in O.S.No.65 of 2007 pending on his file.

For Petitioner : Mr.N.Balakrishnan

ORDER

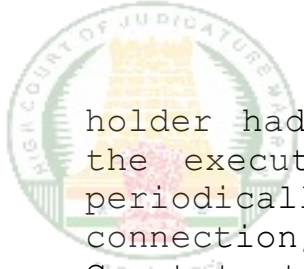
Invoking the provisions of Article 227 of the Constitution of India, the petitioner has approached this Court with this Civil Revision Petition, seeking a direction to the learned District Munsif cum Judicial Magistrate, Keeranur to dispose of E.P.No.27 of 2011 in O.S.No.65 of 2007, as expeditiously as possible, preferably within a reasonable time, which may be fixed by this Court.

2. Heard Mr.N.Balakrishnan, learned counsel appearing for the revision petitioner and perused the averments of revision as well as the related materials available on record.

3. It appears that the revision petitioner herein, has filed a suit in O.S.No.65 of 2007 as against the respondent for eviction. That suit was decreed. Challenging the judgment and decree, the respondent had preferred an appeal in A.S.No.5 of 2012. After hearing both sides, the first appellate court has dismissed the appeal confirming the judgment of the trial court. Having been aggrieved by the judgement passed by the lower appellate court in A.S.No.2 of 2012, the respondent being the defendant preferred a second appeal before this Court and that appeal was originally dismissed for default. Subsequently, on an application that second appeal was restored to its original file and now pending for hearing.

<https://hcservices.ecourts.gov.in/hcservices/>

4. In the meanwhile, as it is submitted by Mr.N.Balakrishnan, learned counsel for the revision petitioner being the decree



holder had filed an execution petition in E.P.No.27 of 2011 for the execution of the decree. That execution petition has been periodically adjourned without assigning any reason. In this connection, Mr.N.Balakrishnan has invited the attention of this Court to the provisions of Rule 5(sub rule 1 to 5) of Order 41 of the Code of Civil Procedure. Rule 5 of Order 41 contemplates stay by Appellate Court. Sub Rule 1 of Rule 5 envisages that 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 to 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.

5. In this regard, Mr.N.Balakrishnan has submitted that the mere pendency of the second appeal would not operate as a stay unless the Court had specifically granted an order of Stay. Since, no stay can be granted by this Court, the proceedings of the execution petition could not be automatically brought to a stand still and therefore the petitioner herein being the decree holder had sought a direction for the speedy disposal of the execution petition.

6. This Court has convinced and satisfied with the reasons assigned in the grounds of the revision and considering the above facts and circumstances, this Civil Revision Petition is disposed of with a direction to the learned District Munsif cum Judicial Magistrate, Keeranur, to dispose of the execution petition in E.P.No.27 of 2011 in O.S.No.65 of 2007 as expeditiously as possible preferably within a period of two months from the date of receipt of a copy of this order, without loss of further time. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

PJL

To

The District Munsif cum Judicial Magistrate,
Keeranur, Pudukottai District.

+1CC to Mr.Balakrishnan Advocate Sr.No.4504

GJM/SKS/RR/22.3.16-2p-3C

C.R.P (MD) No.98 of 2016

Dated : 25/01/2016