

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.593 OF 2016

ORDER:

The order, under challenge in this revision proceedings, was passed by the Principal Junior Civil Judge, Chodavaram in E.P. No.87 of 2014 in O.S. No.113 of 1995 dated 18.11.2015. The petitioner herein is the defendant in O.S. No.113 of 1995, and the judgment-debtor in E.P. No.87 of 2014 in O.S. No.113 of 1995. The said E.P. was filed under Order 21 Rule 35 C.P.C. seeking delivery of possession of the suit schedule property by issuing delivery warrant.

In the order under revision, the Court below observed that the suit in O.S. No.113 of 1995 was decreed in favour of the plaintiff; the appeal preferred thereagainst, in A.S. No.1 of 2000, was dismissed; the judgment-debtor had failed to hand over possession to the petitioner-plaintiffs; it was in the interest of justice that the fruits of the decree should be enjoyed by the decree holder; and it was necessary, therefore, for a delivery warrant to be issued to deliver the petition schedule property to the decree holders.

Sri K. Subrahmanyam, Learned Counsel for the petitioner, would submit that the Court below had erred in holding that no Second Appeal had been filed by the defendant (revision petitioners herein) when in fact they had filed S.A. No.1605 of 2004 which is pending on the file of this Court. He would also draw attention of this Court to the initial part of the order passed by this Court, in SAMP No.1666 of 2011 and SAMP No.13296 of 2004 dated 04.02.2013, wherein it was recorded that the Counsel for the defendant was present, and to the operative portion of the order wherein it is observed that the stay was vacated on the ground that the Counsel for the defendant was not present on that date also. Learned Counsel would contend that the order is inconsistent, and should be ignored.

I must express my inability to agree. Consequent upon the suit in O.S. No.113 of 1995 being decreed, the petitioner herein preferred the appeal in A.S. No.1 of 2000. On the said appeal being dismissed, he preferred the Second Appeal before this Court in S.A. No.1605 of 2004. He also filed an application seeking stay in SAMP No.13926 of 2004 and, initially, interim stay was granted by order dated 30.12.2004. Subsequently, in the order in SAMP No.1666 of 2011 and SAMP No.13296 of 2004 in SA No.1605 of 2004, this Court observed that the petitioner's Counsel was absent on that day also, inspite of listing the matter under the caption 'for dismissal'; the respondent's Counsel was present; it appeared that the petitioner was not interested to pursue his petition; there was no representation, and hence the interim stay granted on 30.12.2004 was vacated. The order of this Court, as extracted hereinabove, shows that absence of the petitioner's Counsel resulted in the stay granted earlier being vacated. It is evident, therefore, that there is no stay order in force.

While the Court below no doubt erred in noting that no Second Appeal was filed by the revision petitioner, as SA No.1605 of 2004 was filed, the fact remains that the earlier interim stay granted by this Court was subsequently vacated and, as on date, there is no stay order in force. In the absence of an order of stay, it was open to the respondent-plaintiff to execute the decree, as affirmed in A.S. No.1 of 2000, in accordance with law. I see no reason, therefore, to interfere with the order of the Court below. Suffice it to make it clear that, delivery of the petition schedule property to the respondent- decree holders, would be subject to the result of SA No.1605 of 2004 which is pending on the file of this Court. The Civil Revision Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 12.02.2016.
MRKR

