

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP. (NPD) No.942 of 2017
and CMP No.4654 of 2017

1.Vajjiravelu alias Anthony
2.V.Joseph
3.V.Andrews
4.V.Savarimuthu

Petitioners

vs.

Jayakumar

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair order and decretal order passed on 20.02.2017 in I.A.No.34/2016 in A.S.No.26 of 2012 by the Subordinate Judge, Tambaram.

For petitioner Mr.A.Palaniappan
For respondent Mr.J.Ram

ORDER

This civil revision petition has been filed against the fair and decretal order passed on 20.02.2017 in I.A.No.34 of 2016 in A.S.No.26 of 2012 by the Subordinate Judge, Tambaram.

2. According to the petitioners, the petitioners 2 to 4 filed O.S.No.127 of 2004 before the District Munsif Court, Alandur and the respondent herein filed O.S.Nos.126 of 2004 and 570 of 2005 before the same Court. All the three suits were taken up for hearing together; O.S.Nos.126 of 2004 and 570 of 2005 filed by the respondent were decreed by the trial Court, whereas, the suit filed by the petitioners 2 to 4 in O.S.No.127 of 2004 was dismissed. As against the judgment and decree passed in O.S.No.570 of 2005, the petitioners filed an appeal in A.S.No.26 of 2012 before the Sub Court, Tambaram. In the aforesaid Appeal Suit, the petitioners filed I.A.No.34 of 2016 for stay of operation of the decree and judgment dated 25.11.2011 passed in the aforesaid O.S.No.570 of 2005. The aforesaid I.A.No.34 of 2016 was dismissed by the appellate Court and therefore, the petitioners have filed the present civil revision petition before this Court.

3. According to the petitioners, the respondent herein filed an Execution Petition before District Munsif Court, Alandur and now, it is posted for delivery of possession. Therefore, there is an urgency in getting interim stay of the execution, otherwise, the petitioners will be put to irreparable loss, in the event of the appeal suit being allowed.

4. On the contrary, the learned counsel for the respondent would submit that the petitioners have filed interlocutory application in the year 2016

whereas, the Appeal suit was filed in the year 2012. Therefore, there are no *bona fides* on the part of the petitioners, since the Appeal Suit itself has been taken up for argument and disposal. Hence, the Civil Revision Petition is liable to be dismissed.

5. Heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

6. As far as the Appeal Suit is concerned, it has been filed in the year 2012. The respondent herein filed the Execution Petition in E.P.No.35 of 2012 before the District Munsif, Alandur and delivery of possession has been ordered. Hence, he has filed the aforesaid application to stay the operation of the judgment and decree passed by the District Munsif Court, Alandur. The said fact has not been disputed by the learned counsel for the respondent herein.

7. Considering the facts and circumstances of the case, the appellate Court has dismissed I.A.No.34/2016 on the ground that the petitioners have filed the said application at the stage when the Appeal Suit was taken up for argument.

D.KRISHNAKUMAR, J.

gms

8. In view of the above, at this stage, I am not inclined to interfere with the Appeal Suit proceedings now pending before the Sub-Court, Tambaram. However, taking into consideration the fact that delivery of possession has been ordered by the District Munsif Court, Alandur in E.P.No.35 of 2012, I am inclined to grant stay of further proceedings in I.A.No.34 of 2016, pending disposal of the Appeal Suit in A.S.No.26 of 2012 before the Sub Court, Tambaram and the impugned order dated 20.02.2017 passed by the Court below in I.A.No.34 of 2016 in A.S.No.26 of 2012 is set aside. Both the learned counsel undertake that they will co-operate for the disposal of the Appeal Suit and their submission is recorded.

In the result, this civil revision petition is allowed. No costs. Connected C.M.P. is closed.

14.03.2017

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NOTE TO OFFICE: Issue order copy by 20.03.2017

To

The Subordinate Judge, Tambaram.

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