

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.No.3268 of 2016

and

C.M.P Nos. 16601 of 2016 & 254 of 2017

Nabiza Bava @ Nabiza

.. Petitioner

Vs.

Iyappan

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 Code of Civil Procedure against the order dated 04.10.2016 made in Execution Petition in E.P.No.181 of 2016 in O.S.No.95 of 2014 pending on the file of Sub Court, Neyveli.

For petitioner: Mr.R.Selvakumar

For respondent: Mr. V. Rajesh Babu

ORDER

The petitioner has filed this Civil Revision Petition against the order dated 04.10.2016 made in Execution Petition in E.P.No.181 of 2016 in O.S.No.95 of 2014 pending on the file of Sub Court, Neyveli.

2. By consent of both the parties, the Civil Revision Petition is taken up for final disposal.

3. Brief facts of the case is as follows :-

The petitioner borrowed a sum of Rs.4,00,000/- as loan from the respondent, on 18.03.2012, with an interest of 1% per month and executed a promissory note to that effect. Since the petitioner repay neither the loan nor the interest, the respondent filed a suit in O.S.No. 95 of 2014 and obtained an ex-parte decree on 14.02.2015. Based on that, the respondent initiated execution proceedings in E.P.No. 43/2015 and the same was closed on 11.01.2016. Subsequently, another E.P. No. 181 of 2016 was filed and an order of attachment of salary was passed on 04.10.2016. Against the same, the petitioner filed the revision before this Court, along with a petition for stay. This Court by its order dated 19.10.2016, stayed the execution proceedings, on condition to deposit a sum of Rs.1,50,000/-. Whiles, the respondent filed a petition in CMP No. 254 of 2017, to vacate the stay order. By order dated 16.03.2017, this Court directed the petitioner to deposit another sum of Rs.50,000/- before the Trial Court and file an affidavit to that effect. The said amount has also been deposited and affidavit filed before this Court on 05.04.2017.

4. It is submitted by the learned counsel for the petitioner that the petitioner has also filed an appeal in ASSR No. 6392 of 2017 on the afore said suit, with an Interlocutory Application in I.A. No.97 of 2017, seeking to condone the delay of 750 days in filing the appeal. The same is pending before the Principal District and Sessions Judge, Cuddalore. In the mean time, the aforesaid order dated 04.10.2016, if executed by the respondent will cause great hardship to the petitioner and hence the present revision is filed by the petitioner.

5. At the time of the admission, this Court passed an order of stay, on condition that the petitioner shall deposit a sum of Rs.1,50,000/- to the credit of the aforesaid Execution Court, within a time frame and the same was complied with, by the petitioner. Again when the matter came up before this Court on 16.03.2017, the petitioner was directed to deposit a further sum of Rs.50,000/-. Today, it has been reported by the learned counsel for the petitioner that both the afore said orders have been complied with and prayed to direct the said court to dispose of the Interlocutory Application in I.A.No.97 of 2017, to be disposed of, within a stipulated time, framed by this Court and till then the order passed by the Executive Court may be stayed.

6. The learned counsel for the respondent would submit that as directed by this court, the respondent has filed an appropriate application for withdrawal of the aforesaid amount, that has been deposited before the Execution Court. If any direction is given by this court to dispose of the application in I.A.No.97 of 2017, the respondent will cooperate, for disposal of the same. Pending the aforesaid application, the respondent undertakes that he will not proceed with the execution proceedings.

7. In the light of the submissions made by the learned counsel for the parties, this Court is inclined to pass following the orders:

- i. The impugned order passed in E.P.No.181 of 2016 shall be kept in abeyance, till the disposal of the Interlocutory Application in I.A.No.97 of 2017 in A.S.S.R.No. 6392 of 2017 on the file of the Principal District and Sessions Court, Cuddalore.
- ii. In view of the undertaking given by the learned counsel for the parties, the Appellate Court is directed to dispose of the I.A.No.97 of 2017 in ASSR.No.6392 of 2017, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of copy of this order.

- iii. Both the parties undertakes to cooperate before the Appellate Court, for disposal of the said Interlocutory Application, at an early date.

8. The Civil Revision Petition is disposed of, with the above direction. Consequently, the connected M.Ps are closed. No costs.

09.06.2017

Index : Yes/ No

Speaking Order/ Non Speaking order

[Issue order copy on 14.06.2017]

avr

To

The Sub Court, Neyveli.

D. KRISHNAKUMAR.J

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