

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.937 and 938 of 2006

B.Umapathy

.. Petitioner
in both CRPs

Vs.

M/s.Sagar Constructions
Rep.by its Proprietor
K.M.Vidyasagar
No.91 & 92, Jawaharlal Nehru Salai
Ashok Nagar, Chennai – 83.

.. Respondent
in both CRPs

PRAYER: Civil Revision Petitions filed under Section 115 of C.P.C.,
against the fair and decretal order dated 19.08.2005 made in
E.P.Nos.337 and 339 of 2005 on the file of the learned IX Assistant
Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Tholgappian

For Respondent : No Appearance

COMMON ORDER

The Civil Revision Petitions are filed against the fair and
decretal order dated 19.08.2005 made in E.P.Nos.337 and 339 of

2005 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the plaintiff and respondent is the first defendant in O.S.No.5686 of 2000. The petitioner and respondent compromised the matter and compromise decree was passed on 19.09.2001 in O.S.No.5686 of 2000. As per the compromise decree, the petitioner has given up 1090 sq.ft on condition that the respondent deliver 150 sq.ft land on south-east corner of the suit land and the respondent would construct and deliver the flat measuring 585 sq.ft in the second floor in Block No.B, Flat No.D. If the respondent fails to deliver the said flat within the time limit, the respondent has to pay a sum of Rs.3/- per sq.ft per month to the petitioner. As the respondent failed to deliver the flat within the time limit as agreed upon, the petitioner filed E.P.Nos.2185 & 2187 of 2002 for arrest and detain the respondent in civil prison and for attachment of immovable property. The respondent filed E.A.Nos.2652 and 2651 of 2003 under Section 47 of C.P.C., contending that the decree is not executable as the petitioner failed to register the compromise decree in respect of immovable property as per Section 17(2)(vi) of the Registration Act. The learned Judge

considering the said provisions allowed E.A.Nos.2651 and 2652 of 2003 by holding that the decree is not executable for want of registration. Now the petitioner has filed E.P.Nos.337 and 339 of 2005 for arrest and detain the respondent in civil prison for non-payment of damages and for attachment of immovable property.

3. The respondent filed common counter affidavit and submitted that the present execution petitions are not maintainable, in view of the fact that the earlier E.P.Nos.2185 and 2187 of 2002 were dismissed for non-registration of compromise decree.

4. The learned Judge considering the fact that the petitioner did not challenge the order passed in E.A.Nos.2651 and 2652 of 2003 in E.P.Nos.2187 and 2185 of 2002 dismissed the present execution petitions in E.P.Nos.337 and 339 of 2005 by holding that the decree is not executable and the order passed in E.A.Nos.2651 and 2652 of 2003 has become final.

5. Against the said order dated 19.08.2005 made in E.P.Nos.337 and 339 of 2005, the present two civil revision petitions are filed by the petitioner/tenant.

6. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

7. In view of the fact that by order dated 28.08.2003 made in E.A.No.2652 of 2003 in E.P.No.2185 of 2002, wherein it has been held that the compromise decree is not executable for want of registration and the said order has become final, there is no irregularity in the order passed by the learned Judge dated 19.08.2005 dismissing E.P.No.337 of 2005 filed by the petitioner for the very same relief.

8. As far as E.P.No.339 of 2005 is concerned, the contention of the learned counsel for the petitioner that earlier E.P.No.2187 of 2002 is with regard to attachment of immovable property and the present E.P.No.339 of 2005 is with regard to damages and not for immovable property and the said E.P. is maintainable, is without merits. The damages arises only when the respondent failed to deliver the flat within the time limit as agreed upon and recorded in

the compromise decree. In view of this, the said E.P. is filed only on the ground of non delivery of flat and the compromise decree has to be registered as per Section 17(2)(vi) and 47 of the Registration Act.

9. The learned Judge considering all the above facts rightly dismissed both the E.P.Nos.337 and 339 of 2005. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 19.08.2005.

10. In the result, the two Civil Revision Petitions are dismissed. It is open to the petitioner to register the compromise decree and file execution petition, if he has any claim. No costs.

01.09.2017

Index : Yes/No
dm/kj

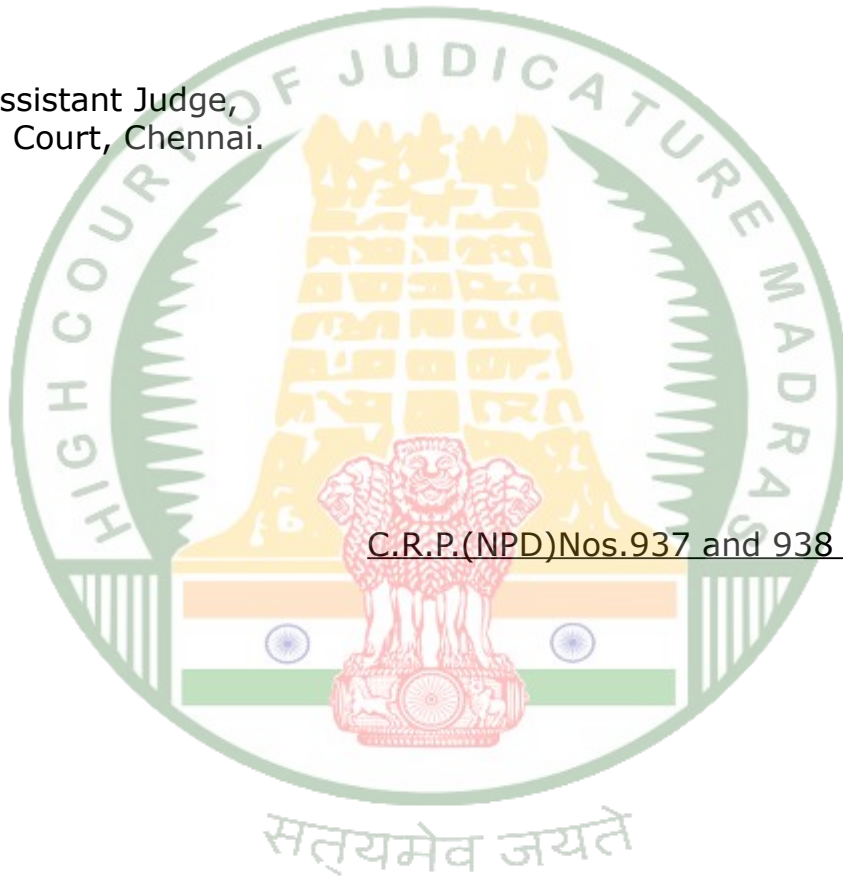
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V.M.VELUMANI, J.

dm/kj

To

The IX Assistant Judge,
City Civil Court, Chennai.



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