

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4789 of 2013
and
M.P.No.1 of 2013**

Sundaram Mudaliyar

.. Petitioner

Vs

Balakrishnan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal Order dated 23.07.2013 made in I.A.No.640 of 2013 in I.A.No.430 of 2011 in O.S.No.55 of 2005 on the file of the District Munsif Court, Jeyamkondam.

For Petitioner : Mr.K.Venkatasubbaan
for M/s.Sarvabhauman Associates

For Respondent : Mr.Balakrishnan (No Appearance)

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ORDER

This civil revision petition is directed against the Fair and Decreeal order dated 23.07.2013 made in I.A.No.640 of 2013 in I.A.No.430 of 2011 in O.S.No.55 of 2005 on the file of the learned

District Munsif Court, Jeyamkondam.

2.The petitioner herein is the plaintiff in the above suit filed for the relief of declaration and consequent injunction.

3.According to the revision petitioner the suit property was sold by the first defendant in favour of the revision petitioner, however regardless of sale again the 1st defendant attempted to interfere with the Peaceful possession of the suit property, hence the above suit was filed by revision petitioner and in the meantime the first defendant died and his legal heirs / respondents herein were brought on record.

4.During Trial on the side of respondents totally 3 witnesses stood examined. It is relevant to note here that previously the respondent's side evidence was closed without examination of witnesses and later the witnesses came to be examined by a conditional order made in I.A.No.439 of 2011 by the trial Court.

5.In the said circumstance, the revision petitioner came up with the above Interlocutory Application in I.A.No.640 of 2013 in I.A.No.439 of 2011 seeking to scrap the evidence of RW3 stating that the examination of RW3 was in violation of the conditional order made

by the trial Court. The Learned trial judge dismissed the revision petitioner's application holding that the violation cannot be held wanton or willful but the same was because of the failure on the part of the revision petitioner's counsel before the trial Court vide the impugned order. The said order is under challenge in this civil revision petition.

6.I heard Mr.K.Venkatasubbaan for M/s.Sarvabhauman Associates, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondent.

7.The only grievance of the petitioner is that despite a conditional order stipulating particular time to produce and examine witness, the respondent has failed to do so. Whereas regardless of respondent's failure in producing witness in time the trial Court has allowed the examination of witnesses beyond the stipulated time.

8.At this juncture, on perusal of the case records, it is obvious for this Court to see that the delay in examination of the witnesses on the side of the respondents is only because of the revision petitioner's Counsel before the trial Court.

9.It is further seen that though the witnesses on the side of the respondent were present in the Court, the Counsel for the revision petitioner has not turned up to cross examine them and had sought time twice. Only in the said factual backdrop there was a delay and non compliance of the conditional order.

10.Therefore, I am unable to accept the contention of the Learned Counsel for the revision petitioner attributing delay towards the respondents and accordingly this Civil Revision Petition is found devoid of merits.

11.In the result, this Civil Revision Petition is dismissed by confirming the order dated 23.07.2013 made in I.A.No.640 of 2013 in I.A.No.430 of 2011 in O.S.No.55 of 2005 on the file of the learned District Munsif Court, Jeyamkondam. No costs. Consequently, connected miscellaneous petition is closed.

Note:Issue order copy on 31.01.2019

vs

Index:Yes/No

Internet:Yes/No

To

The District Munsif Court, Jeyamkondam.

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M.V.MURALIDARAN,J.

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