

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM

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

**CRP(PD)Nos.682 and 683 of 2013
and
M.P.No.1 of 2013**

1.Palanisamy
2.Chinnusamy .. Petitioners in both the CRPs

Vs

K.Sundararajan .. Respondent in both the CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Principal District Munsif Court at Tiruchengode, dated 29.09.2011 in I.A.Nos.759 and 760 of 2011 in O.S.No.557 of 2004.

(In both CRPs)
For Petitioners : Mr.P.Valliappan

For Respondent : Mr.R.Marudhachalamurthy

COMMON ORDER

The defendants are the petitioners in both the Civil Revision Petitions. These two Civil Revision Petitions are filed as against the fair and decreetal orders passed in I.A.Nos.759 and 760 of 2011 dated 29.09.2011 by the learned Principal District Munsif of Thiruchenkodu in

Namakkal District. Originally the suit in O.S.No.987 of 2003 was filed before the Learned Subordinate Judge, Namakkal later the same was transferred to the file of the learned Principal District Munsif at Thiruchenkodu and renumbered as O.S.No.557 of 2004.

2. Pending original suit the plaintiff filed two interim applications in I.A.No.759 and 760 of 2011 for the relief to re-open the suit and for the appointment of Advocate Commissioner to note down the physical features of the suit property. Subsequently, those applications were allowed by the order dated 29.09.2011 and feeling aggrieved over the order of the Learned District Munsif dated 29.09.2011, the instant civil revision petitions are filed.

3. It is brought to the notice of this Court that though on 01.03.2013 the Civil Revision Petitions were admitted and an order of interim stay was granted for four weeks, at the expiry of the four weeks the interim order of stay was not extended and the same was resulted in the disposal of the original suit in favour of the Plaintiff/Respondent.

4. According to the learned counsel for the revision petitioners that though in the pendency of the Civil Revision Petitions, the original

suit was decreed, hence, the Civil Revision Petitions are very well maintainable, since the revision petitioners are having the prerogative rights to raise all these points in the statutory appeal to be preferred as against the judgment and decree passed in the original suit. So, the learned counsel prays this Court to allow the Civil Revision Petitions by considering the grounds raised therein.

5.Per contra, the learned counsel for the Respondent/Plaintiff would submit that as far as the maintainability of the Civil Revision Petitions are concerned they are to be treated as infructuous as the date of the final hearing of the Civil Revision Petitions itself, no suit is pending for adjudication and in such an event the findings of this Court in the instant Civil Revision Petitions would leave no legal consequence in the proceedings of the original suit. Therefore, according to the learned counsel for the revision petitioners the Civil Revision Petitions are liable to be dismissed.

6.I heard Mr.P.Valliappan, learned counsel for the petitioners and Mr.R.Marudhachalamurthy, learned counsel for the respondent in both the Civil Revision Petitions and the materials available on records are perused.

7.The perusal of the records, the factual and the legal submission of the counsels concerned, it is for this Court to answer the following two questions namely:

1.Whether the Civil Revision Petitions are maintainable when the original suit has been decreed?

2.Whether the fair and decreetal orders passed in the interim application in I.A.Nos.759, 760 of 2011 are liable to be interfered with?

8.The bare discussions that as far as the 1st question as to the maintainability of the Civil Revision Petitions is concerned, since the survival of the Civil Revision Petitions itself have no meaning at all in view of the disposal of the original suit. It is true that the life of the interim applications are depending upon the pendency of the original suit. Once the original suit itself has been decided, in accordance with law, then nothing is available to be answered in the proceedings of the interim applications. At the same time it is to be kept in mind that the initiation of the proceeding by filing an original suit is the starting point only to the parties concerned to get their lis adjudicated. At the same time statutory appeal and 2nd appeal are available to the parties concerned and depending upon the nature of the issues framed

therein, the parties concerned can very well approach the Hon'ble Apex Court also. Further, the appeal is the continuation of trial proceeding and the parties concerned can very well agitate their pleas in the appeal proceedings also facts and circumstances of the case. Here in the instant case, the fair and decretal orders passed in aforesaid two applications are the subject matter of the Civil Revision Petitions, the parties concerned are unable to get the disposal of the Civil Revision Petitions prior to the disposal of the original suit.

9.I am fortified with the judgment of this Court reported in 2015(2) CTC 108:

"Hence, this Court is of the view that the interest of justice can be subserved by disposing of the revision and declaring that the impugned order of the Trial Court dismissing I.A.No.160 of 2011 as not maintainable is not proper and granting liberty to the petitioner to file a petition before the Appellate Court in the Appeal seeking modification of the Interim Maintenance awarded by the Trial Court in I.a.No.192 of 2006.

In the result, the Civil Revision Petition is disposed of declaring that the dismissal of I.A.No.160/2011 on the ground of maintainability is not proper. However, in view of the fact that the HMOP is not pending, I.a.No.160/2011 shall stand dismissed, with liberty to the Petitioner to seek

enhancement of Interim Maintenance in the Appeal filed against the Decree passed in H.M.O.P.37 of 2008 from the date of presentation of I.A.No.160 of 2011. Since the appeal itself has not been taken on file and the application to condone the delay in re-presentation came to be dismissed and the same is under challenge in another Civil Revision Petition before this Hon'ble Court, the liberty granted to the petitioner shall be exercised only in the event of appeal being numbered. However, there shall be no order as to cost in the revision. Consequently, the connected miscellaneous petition is closed."

10. Another judgment reported in 2016 (5) CTC 350:

"Even though the counter affidavit states that the impugned order was passed under the mistaken belief that the Interim Stay was not in force, when the demand of penalty made by the Respondent-Board is the subject matter of W.P.No.30358 of 2012 and when an interim order had also been granted by this Court, in the said Writ Petition, staying the payment of penalty imposed, even if the Interim order had not been extended subsequently, unless the said order had been vacated, modified or varied, it is deemed to be in force. The respondent board cannot take advantage of non-extension of the Interim Order to demand payment of penalty, as a pre-condition, for effecting Domestic Service connections sought by the petitioner."

However, considering the fact that the respondents have already given domestic service connections, as sought by the petitioner, and the impugned order has been passed, only under a mistaken notion, as stated in Paragraph No.13 of the Counter Affidavit, the writ petition is closed. No costs. Connected W.M.P. is closed."

11.As far as the judicial proceedings are concerned they are strictly based on law and judicial interpretation. It is totally different from administrative proceedings. The object of the judicial proceedings is to render justice ultimately and the same will have nexus with the orderly society. The Court cannot sit in mechanical manner while exercising the jurisdiction Under Article 227 of the constitution of India.

"Article 227"

Power of superintendence over all Courts by the High Court.

[Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]

2. *Without prejudice to the generally of the foregoing provisions, the High Court may-*

- a) Call for returns from such Courts;*
- b) Make and issue general rules and prescribe forms for regulating the by the officers of any such Courts.*
- c) Prescribe forms in which books, entries and*

accounts shall be kept by the officers of any such Courts.

3. *The High Court may also settle tables of fees to be allowed to the sheriff and al clerks and officers of such Courts and to attorneys, advocates and pleaders practicing therein:*

Provided that any rules made, forms prescribed or tables settled under clause(2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the governor.

4. *Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces."*

12. Here the two Civil Revision Petitions are filed challenging the correctness of the fair and decreetal order passed therein. At the same time it is unfortunate and undesirable event of the disposal of the original suit in the pendency of the Civil Revision Petitions. It is legally correct that the trial Court need not wait to further proceed with the original suit, when there is no interim order of stay of the proceedings of the original suit. Likewise, the paramount consideration is the adjudication of the issue which was raised either in the revisional or

appellant jurisdiction as the common citizen of this country is having unshakable trust upon the judiciary.

13. In the instant case the points raised by the revision petitioners as against the fair and decretal order passed in I.A.Nos.759 and 760 of 2011 are that though the application were belatedly filed after eight years, further the possession of the plaintiffs has also not pleaded in the instant suit. However the learned judge has failed to consider that the weakness of the Revision Petitioner/Defendant cannot be taken into advantage by the Respondent/Plaintiffs. The learned Trial Judge has held that "though the Revision Petitioners/Respondents/ Defendants denied that no pipe line was physically available are earthed under their land, but the same has not been proved them". This finding of the learned Trial Court is legally unsustainable. Further, when the earthling of pipe line is asserted by the Respondent/Plaintiff, It is for him to prove the same. Therefore the finding of the learned Trial Judge is liable to be interfered with. Moreover, the findings of the learned Trial Judge have touched the merits of the main suit the same is liable to be interfered with as it is the reflection of the judicial mind of the Court in the determination of the issues framed thereon in the proceedings of the

interim applications.

14. Further this Court is aware that the findings of the Revision Petitions would serve no purpose but the object of the legal proceedings is meant for the rendering of substantial and meaningful justice. In such a circumstance, the finding of the Civil Revision Petitions will have bearing in case of filing of the appeal as against the decree and judgment passed in the original suit in view of section 105 of CPC.

Other orders:

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

15.In the result, both the civil revision petitions are allowed by setting aside the order passed in I.A.Nos.759 and 760 of 2011 in O.S.No.557 of 2004, dated 29.09.2011, on the file of the learned Principal District Munsif, Tiruchengode, by giving liberty to the revision petitioners to raise all the points raised in both the civil revision petitions and get redressed in the appeal if any to be filed as against the decree passed in the original suit in O.S.No.557 of 2004. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2017

vs

Note:Issue order copy on 01.02.2019

Index:Yes

Internet:Yes

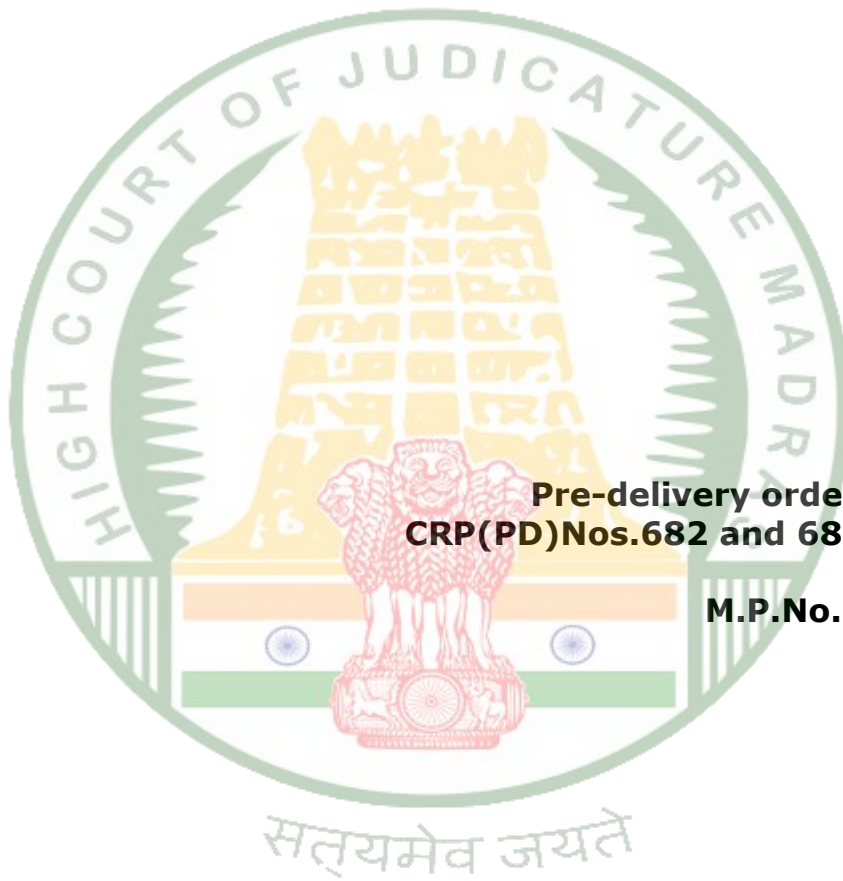
To

The Principal District Munsif,
Tiruchengode.

WEB COPY

M.V.MURALIDARAN,J.

VS



**Pre-delivery order made in
CRP(PD)Nos.682 and 683 of 2013
and
M.P.No.1 of 2013**

WEB COPY

03.04.2017