



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD) No.2331 of 2017(NPD)
and CMP(MD) No.11261 of 2017

1.Jawahar Ali
2.Razik Ali

... Petitioners/Respondents/
Judgment Debtor/Defendants 2 & 3

-Vs-

Sayeedha Beevi

... Respondent/Petitioner/
Decree Holder/Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, 1908 against the fair and decreetal order dated 07.11.2017 passed in E.P.No.71 of 2017 in O.S.No.123 of 2010 on the file of the Principal Sub Court, Tirunelveli.

For Petitioners : Mr.D.Nallathambi

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 07.11.2017 passed in E.P.No.71 of 2017 in O.S.No.123 of 2010 on the file of the Principal Sub Court, Tirunelveli.

2. The petitioners would aver among other things that as against the decree of the trial court in O.S.No.123 of 2010 regarding delivery of the suit schedule lorry, the petitioners preferred an Appeal Suit in A.S.No.35 of 2017 before the IV Additional District Court, Tirunelveli and pending appeal, the petitioners filed stay application under Order 41 Rule 5 of C.P.C in I.A.No.163 of 2017 in the said Appeal Suit.

3. It is further averred that the respondent herein preferred another Appeal Suit in A.S.No.52 of 2017 before the same court as against the dismissal portion regarding rendition of account. The said Appeal Suit is also pending. In these circumstances, the respondent herein filed Execution Petition in E.P.No.71 of 2017 before the Principal Sub Court, Tirunelveli for execution of decree for delivery of suit schedule lorry in O.S.No.123 of 2010 and for arrest of the judgment debtor under Order 21 Rule 31 C.P.C. The petitioner appeared before the Execution Court and explained about the pendency of two Appeal Suits and without considering the same, the execution court ordered arrest. Aggrieved over the order of arrest dated 7.11.2017 in E.P.No.71 of



2017 in O.S.No.123 of 2010 on the file of the Principal Sub Court, Tirunelveli, the petitioners preferred the present Civil Revision Petition.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. Since the petitioners have not complied with the order of delivery of lorry, the lower court has passed an order of arrest. Admittedly both the plaintiff and the defendants have filed Appeal Suits and the said Appeal Suits are pending. On a perusal of records, this Court finds no infirmity in the order passed by the learned Principal Subordinate Judge, Tirunelveli, in E.P.No.71 of 2017 in O.S.No.123 of 2010 .

6. However, the learned counsel for the petitioners would submit that the suit A.S.No.35 of 2017 is coming up for hearing on 18.12.2017. The learned counsel would further submit that since the Judicial Officer was not available in that court, they could not obtain interim order and therefore, he would pray for an interim order of stay till 18.12.2017.

7. In the above circumstances, this Court feels that the petitioners shall argue for getting interim order on 18.12.2017 and till 18.12.2017, there shall be an order of stay in A.S.No.35 of 2017 and if the court below is not inclined to grant interim on that day, the order of stay granted by this Court shall stand automatically vacated without reference to this Court.

8. The court below is directed to dispose of the stay application on that day itself on its own merits and in accordance with law.

9. With the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.11261 of 2017 is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The IV Additional District Judge, Tirunelveli,
2. The Principal Subordinate Judge, Tirunelveli.

+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 91600

CM

TE/SKN-RSK/SAR-1 : 20/12/2017 : 2P/4C