



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.2432 of 2017

and

C.M.P. (MD) .No.11516 of 2017

R.Nataraj .. Petitioner/Respondent/Defendant

vs.

S.Muthuramalingam .. Respondent/Petitioner/Plaintiff

PRAYER : Civil Revision Petition filed under Section 115 Civil Procedure Code, against the order dated 06.11.2017 made in E.P.No.01 of 2016 in O.S.No.229 of 2014, on the file of the learned District Munsif, Melur.

For Petitioner : Mr.M.S.Jeyakarthik

ORDER

This Civil Revision Petition has been filed against the order dated 06.11.2017 made in E.P.No.01 of 2016 in O.S.No.229 of 2014, on the file of the learned District Munsif, Melur.

2.The learned counsel for the petitioner stated that the respondent filed a money suit in O.S.No.229 of 2014 before the learned District Munsif, Melur against the petitioner for seeking the amount of Rs.90,666/-. The averment made in the plaint is that on 15.06.2013, the petitioner borrowed a loan of Rs.80,000/- from the respondent for the interest of 1%. As a security, the petitioner gave promissory note and original sale deed of the suit property to the respondent. Thereafter, the petitioner failed to pay the principal loan amount as well as the interest. Therefore, the respondent issued legal notice, dated 28.06.2014 to the petitioner. Having received the above notice, the petitioner sent reply notice to the respondent. However, the petitioner has not come forward to pay the loan amount and its interest. Therefore, the respondent filed a suit in O.S.No.229 of 2014 before the learned District Munsif, Melur against the petitioner.

3. During the course of trial, due to the illness of the petitioner, he was not able to appear before the trial Court and the suit was set exparte. Further the petitioner underwent three



accidents and undertaken medical treatments and after he became alright, he asked about the status of the case and found that the case was set exparte. Thereafter, he filed the a petition to set aside the exparte order with the delay petition. In the meanwhile, the respondent filed execution petition in E.P.No.1 of 2016 for executing the judgment and decree, dated 26.06.2015. The petitioner filed E.A.No.25 of 2017 in E.P.No. 1 of 2016 and without considering the same, the trial Court dismissed the above petition, by an order, dated 06.11.2017, ordered to conduct sale on 18.12.2017. The petitioner submitted that the petitioner's house is a dwelling house and if the sale is held on 18.12.2017 he will be put into irreparable loss and hardship.

4. Considering the facts and circumstances, this Court is of the view that the trial Court has rightly dismissed the Execution Application filed to stay the execution proceedings, since the trial court cannot go beyond the decree. But considering the accident met with by the petitioner and that the house is a dwelling house, I am inclined to grant time to the petitioner to pay the entire amount. Accordingly, to show the bonafide, the petitioner is directed to pay a sum of Rs.20,000/- within a period of one week to the credit of the E.P.No.1 of 2016 in O.S.No.229 of 2014, before the learned District Munsif, Melur and the balance amount shall be paid within a period of one month from the date of receipt of the copy of this order, failing which, the learned trial Judge is at liberty to proceed with the execution petition in the manner known to law.

5. Till then there will be an order of interim stay of the further proceedings of the order, dated 06.11.2017 made in E.P.No.1 of 2016 in O.S.No.229 of 2014 on the file of the learned District Munsif, Melur.

6. With the above terms, this Civil Revision Petition is disposed of.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Melur.
+1CC to Mr.M.S.Jeyakarthik, Advocate, SR.No. 92980

C.R.P. (MD) No.2432 of 2017

PJL