

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1362 of 2018
and C.M.P.No.7169 of 2018

1.Jeyaraman

2.Meera Manokar

.. Petitioners

vs

Joseph Pouvatchy

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 21.03.2018 passed in E.A.No.25 of 2018 in E.A.No.1 of 2017 in R.C.E.P.No.41 of 2003 in H.R.C.O.P.No.49 of 1999 on the file of the District Munsif Court, Pondicherry.

For Petitioners : Mr.T.S.Baskaran

For Respondent : No Appearance

ORDER

This civil revision petition is directed against the impugned fair and decretal order dated 21.3.2018 on the file of the District Munsif Court, Pondicherry in E.A.No.25 of 2018 in E.A.No.1/2017 in R.C.E.P.No.41 of 2003 in

H.R.C.O.P.No.49 of 1999 arising out of eviction order dated 27.9.2001 in R.C.A.No.32 of 2001.

2. The petitioner was a tenant of the respondent. The eviction petition was filed by the respondent in the year 1999. It came to be dismissed on 28.2.2001. Under these circumstances the respondent filed R.C.A.No.32 of 2001. The said appeal was allowed by an order dated 27.9.2001.

3. Pursuant to order dated 27.09.2001, the respondent filed in R.C.E.P.No.41 of 2003 on 14.11.2002. In the said proceeding the petitioners herein filed the counter on 06.06.2014. The respondent thereafter herein filed an application in I.A.No.521 of 2002 for amendment of the schedule to the property and same was allowed on 14.3.2003.

4. The petitioners therefore filed R.C.A.No 31 of 2004 on 16.09.2004, against the order passed in I.A.No. 521 of 2002 on 14.03.2003. Pending the aforesaid R.C.A, the petitioner also filed I.A.No.109 of 2005 to reject the vakalath filed by POA of the respondent on the ground that the said document was not signed by the respondent. On 24.1.2006, R.C.A.No.31 of 2004 as well as I.A.109 of 2005 were dismissed.

5. The petitioner thereafter filed C.R.P.Nos.3551 & 3552 of 2007 questioning the order dated 16.9.2004 passed in R.C.A No.31 of 2004 and order passed in I.A. 109 of 2005. These C.R.Ps' were dismissed by this court on 29.4.2015.

6. During the interregnum, the petitioners also filed E.A.No.1 of 2007 under Section 47 of the Civil Procedure Code in E.A.No.1 of 2007 in R.C.E.P.No.41 of 2003 questioning the executability of the degree in the eviction petition.

7. On 6.10.2017, E.A No.1 of 2007 in R.C.E.P.No.41 of 2003 was dismissed for default as there was no representation on behalf of the petitioners. On 01.02.2018, the Court Amin visited the property and the petitioner claims he came to know about the dismissal of E.A.No.1 of 2007 on the said date.

8. Under these circumstances, the petitioners filed E.A.No.25 of 2018 for restoration of E.A.No.1 of 2007 in R.C.E.P.No.41/2003 under section 151 of CPC.

9. On 21.03.2018, E.A.No.25 of 2018 was dismissed on the ground that it was filed after a lapse of 30 days and that the reasons stated by the petitioners were not acceptable.

10. In the affidavit filed in support of the said petition, the 1st petitioner has stated that he had undergone a heart surgery on 11.08.2007 and was undergoing treatment and therefore could not take steps to file the petition earlier and came to know about the same only on 01.02.2018 when the Court Amin visited the premises and therefore filed the E.A.No.25 of 2018 within 30 days of the knowledge of order dated 06.10.2017.

11. The medical certificate produced by the 1st petitioner was that of General Surgeon who was Paediatric Specialist and not by doctor who was in the discipline of Coronary heart disease. The Principal District Munsif, Pondicherry has doubted the credibility of the medical certificate produced by the 1st petitioner and considering the fact that the respondent had obtained a decree way back in 2001 for evicting the petitioners and considering the fact that the respondent has not enjoyed the fruits of the decree has held that there was no merits in the petition filed under section 151 of the Civil Procedure Code to restore the E.A.No.1 of 2007 dismissed on 06.10.2017.

12. Heard Mr. Bhaskaran, learned counsel for the petitioner.

13. The learned counsel for the petitioners relied on the following decisions in support of the above Civil Revision Petition:-

i) **Anindya Chandra Verma and others vs Suraj Prasad**

Ojha AIR 1963 Patna 59

ii) *NattanAmbalam vs Dhanalakshmi* 2011 (12) MWN
(Civil) 144

14. Though notice was ordered through court and by way of private notice and on the notice on the counsel for the respondent/decreed holder before the lower court, there is no representation on behalf of the respondent herein.

15. It is the contention of the learned counsel for the petitioners that the petitioners are entitled for restoration of E.A.No.1 of 2007 as E.A.No.25 of 2018 was filed on 08.02.2018 within 30 days of the knowledge on 01.02.2018 of the dismissal on 6.10.2017.

16. As far as the medical certificate is concerned, it was submitted that the certificate was given by general surgeon who incidentally specialised as a paediatric surgeon and was therefore competent to certify the nature of illness and treatment undergone by the petitioner.

17. It was further contended that the enquiry in the execution petition had been stayed by this Court in the Civil Revision Petition and therefore the petition filed under section 47 of the CPC came to be adjourned periodically and therefore the learned District Munsif erred in concluding that section 47 petition was pending for long period and no further opportunity can be given

to the petitioners. It was further submitted that petitioners cannot be faulted for the delay in enquiry in the said petition.

18. It further submitted that the learned District Munsif ought to have examined the valuable and legitimate questions regarding the executability of the order of eviction and therefore the enquiry in section 47 of the CPC ought to have been allowed. According to the petitioner the decree is itself not executable and therefore, the learned District Munsif ought to have allowed the petition for restoring E.A.No.1 of 2007.

19. I have gone through the records. I am of the view that petitioners have frustrated the favourable orders obtained as early as 27.09.2001 by the respondent by taking time for filing counter in E.P. No.41 of 2003 and have thereafter filed R.C.A.No.31 of 2004 on 16.09.2004. The petitioners resisted the enquiry by filing in I.A.No.109 of 2005 in R.C.A.No.31 of 2004 which eventually came to be dismissed on 24.01.2006.

20. Thereafter, the petitioner filed CRP.Nos.3551 and 3552 of 2007 which also came to be dismissed on 29.04.2015.

21. Though the executing court has power to determine all the

questions arising between the parties to the suit in which the decree was passed the petitioners have filed multiple applications and civil revision petition which show that they were moved as a dilatory tactics and to delay the order in E.P. The petitioner cannot take advantage of the delay as C.R.P. and other miscellaneous applications including appeal filed by them.

22. It is quite clear that the petitioner has dragged the proceedings to tire out the respondent/decree holder and have managed to stay in the property for 17 years even though, the order in R.C.A.No.32 of 2001 came to be passed on 27.09.2001.

23. The 1st petitioner claims to have undergone a heart surgery on 11.08.2017 and was advised complete bed rest. Barring the Medical Certificate dated 05.02.2018 no other documents have been filed to substantiate the illness.

24. Therefore, the petitioners cannot be permitted to abuse the court proceedings to the detriment of the respondent without showing sufficient cause.

25. Further the medical certificate produced appears to be obtained in a casual manner it reads as under :-

“ It is certified that Mr.Jayaraman had coronary artery heart disease and had undergone Bypass surgery in August 2007 and he is in continuous treatment for the same. In the first week of September 7th 2017 his health condition got deteriorated and undertook regular treatment. Considering his age and health condition he was advised to take complete bed rest at least for a period of 6th months (i.e.) from September 2017 to February 2017.”

26. It is clear that the medical certificate has been given by a person. who is neither connected with the discipline of coronary heart disease nor has given the date of surgery in the medical certificate. It has been obtained in a causal manner and therefore it cannot be said the petitioner has made out sufficient cause for interference by this Court in this Civil Revision Petition.

27. Even if the 1st petitioner had undergone bypass surgery and was indisposed as has been stated in the affidavit, nothing pre-cluded the 2nd petitioner from pursuing with the case.

28. Further, E.A. No.25 of 2018 has been filed only on 08.02.2018 which is beyond 30 days of the dismissal of E.A. No.1 of 2007 on 06.10.2017. It is quite clear the petitioners have taken the proceedings casually.

29. The unreported decision of the High Court of Patna in **Anindya Chandra Verma and Ors. vs. Surajk Prasad Ojha** AIR 1963 Pat 59 cited by the

petitioner held that the order dismissing the application under Section 47 of the Civil Procedure Code for default was not a decree within the meaning of Section 2(2) of the Civil Procedure Code and therefore the application is to be allowed. In this case, the petitioner has not filed an application for condoning the delay in the said application.

30. The decision of this Court in **Nattan Ambalam vs Dhanalakshmi** 2011 (2) MWN (Civil) 144 cited is also not relevant. In the said case, the execution proceeding was dismissed on 09.01.1998 for non-appearance of the decree holder. The Execution Court while allowing the application to restore the executions proceedings allowed on condition that the respondent/petitioner paying a cost of Rs.500/- to the revision petitioner/defendant before 20.03.2001 failing which the petition would stand dismissed.

31. That said order was challenged by way of Civil Revision Petition. It was contended that E.P.No.217 of 1996 was dismissed for default by an order dated 09.01.1998, but the application for restoration has been filed only on 13.03.2000 and therefore, the application for setting aside the order of dismissal itself is barred by limitation.

32. The decision of the Hon'ble Supreme Court in **Damodaran Pillai and**

others v. South Indian Bank Ltd., 2005(4) CTC 534, was cited, wherein it is observed that “Application under Section 5 of Limitation Act is not maintainable in a proceeding arising under Order 21 of the Code of Civil Procedure as it has been expressly excluded.”

33. On facts, the High Court held that “on an overall assessment of the facts and circumstances of the case in an integral manner, inevitable conclusion is that the Executing Court while allowing E.A.No.81 of 2000 has categorically observed that the respondent/petitioner/plaintiff has obtained a decree in respect of the suit property and if E.A.No.81 of 2000 to restore the E.P.No.217 of 1996 to file and if it is not allowed, then it will cause inconvenience and hardship to the respondent/petitioner/plaintiff in enjoying the fruits of the decree etc., and the said conclusion arrived by the Executing Court while applying/exercising its judicial discretion in allowing E.A.No.81 of 2000 cannot be found fault with in any manner and as per Section 151 of the Code of Civil Procedure. It was observed that the Executing Court has got inherent power to restore the Execution Petition to file which has been dismissed for default earlier and viewed in that perspective, E.A.No.81 of 2000 filed by the respondent/petitioner/plaintiff under Section 151 of the Code of Civil Procedure is quite competent in the eye of law.”

34. In the present case, if the restoration of E.A.No.1 of 2017 in

R.C.E.P.No.41 of 2003 in H.R.C.O.P.No.49 of 1999 is allowed converse is true. The respondent will be put to further inconvenience and the execution proceedings will be further delayed. The respondent has been deprived of his right to enjoy the fruits of the decree for the last 17 years.

35. In this case, even though, the respondent succeeded as early as 27.09.2001, the petitioner resisted the eviction proceeding by filing multiple applications to divert the attention of the respondent and from enforcing and enjoying the fruits of the decree.

36. In my view, the dismissal of restoration application by the lower lower Court does not call for interference.

37. Accordingly, this civil revision petition is liable to be dismissed. No cost. Consequently, connected miscellaneous petition is closed.

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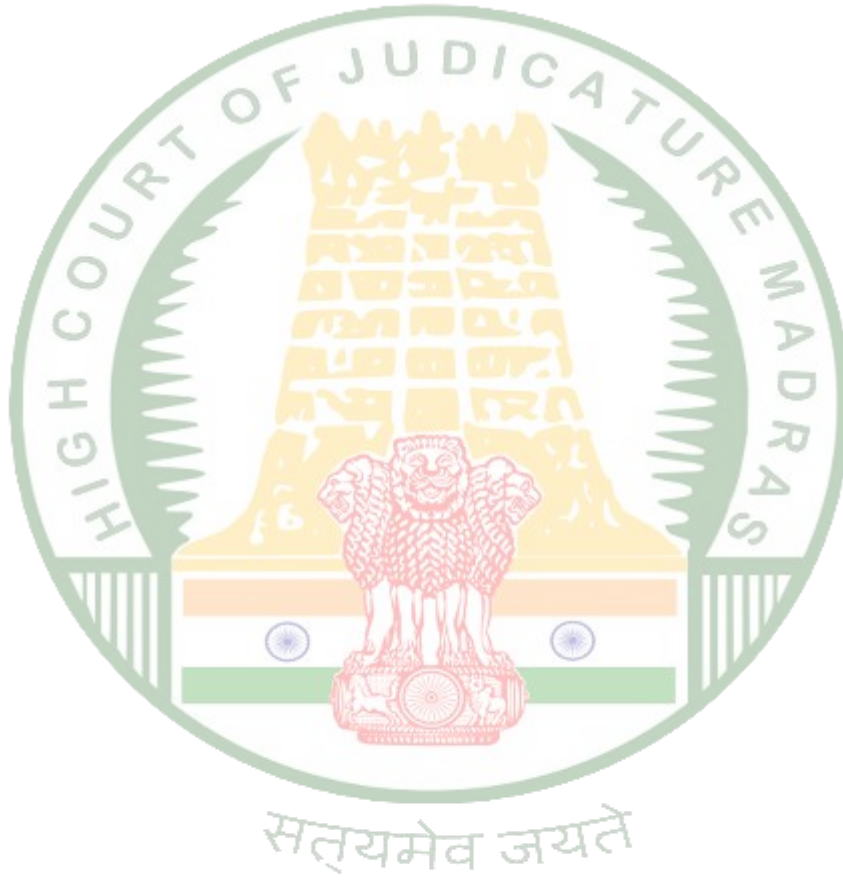
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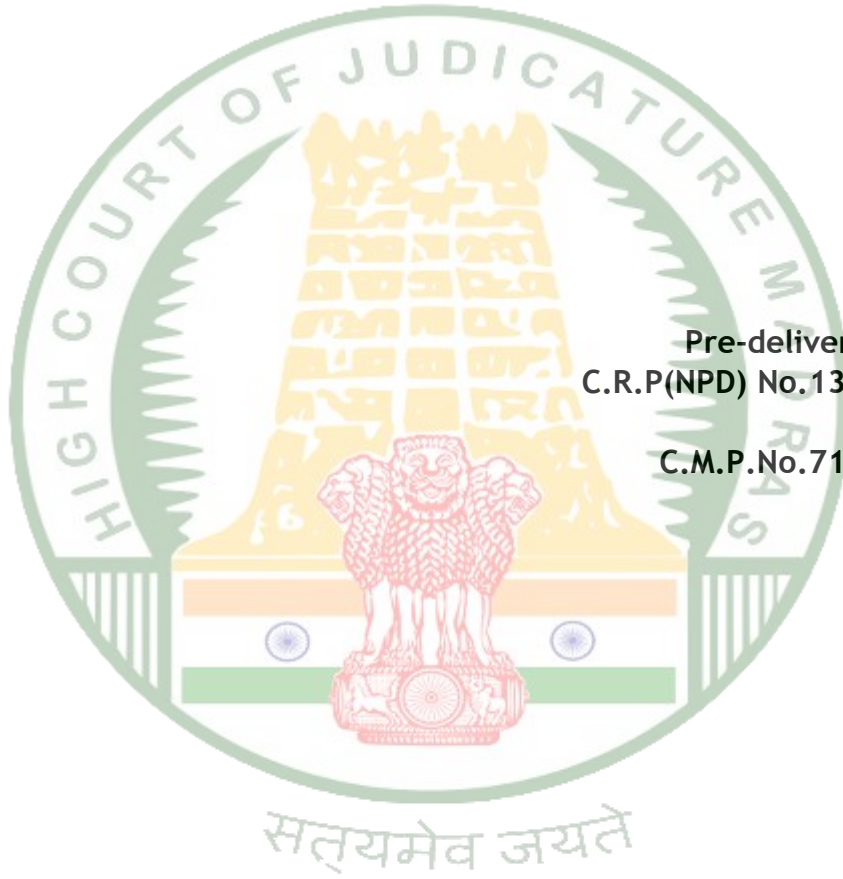
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Pondicherry.



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C.SARAVANAN,J.

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Pre-delivery order in
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