

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(NPD).No. 1933 of 2018 and

C.M.P.No.11195 of 2018

V. K. Sekar

..Petitioner

Vs.

1. V. Chandrasekar
Represented by his
Power of Attorney Agent
D. Loganathan

2. D. Loganathan

..Respondents

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed in E.P.No.42 of 2017 in O.S.No.674 of 2013 on the file of the Principal District Munsif Court, Alandur, dated 21.03.2018.

For Petitioner : Mr. A.R. Nixon

For Respondents: Mr.P.Dhanasekaran For Caveator

O R D E R

The respondent has filed a suit against the revision petitioner in O.S.No.674 of 2013 on the file of the Principal District Munsif, Alandur, and he got decree against the revision petitioner in C.S.No.670 of 2013. After getting the decree, he has filed an Execution Petition to execute the decree in E.P.No.42 of 2017 in O.S.No.674 of 2013 for attachment of the salary of the respondent, in which, the pro-order of attachment of salary was ordered. Hence, the petitioner has filed the present revision petition.

2. The learned counsel for the petitioner would submit that the decree was passed by the learned District Munsif, Alandur, whereas, the Garnishee is the Port Trust. Therefore, the learned District Munsif, Alandur, has no jurisdiction to execute the decree straight away. Since, the Port-Trust is under the jurisdiction of the City Civil Court and the decree should have been transmitted to the City Civil Court and the City Civil Court alone has the competent authority to execute the decree. Since the Port-Trust under the territorial jurisdiction of the City Civil Court.

3. Order 41 Rule 48(a) of the Port-Trust is not covered either under the Central Government or the third parties. Therefore, the Alandur Court has no jurisdiction.

4. Further, the learned counsel for the petitioner would submit that he has preferred an appeal challenging the judgment and decree passed against the Trial Court, the portion of the decree passed against him. Since, the petitioner has filed an appeal in delay, he has filed a petition to condone the delay in filing the appeal, the delay has not yet been condoned. However, the petitioner cannot execute the decree without waiting for the result of the appeal. The executing court not accepted the contention of the revision petitioner and warrant interference of this court and passed the order.

5. The learned counsel for the respondent would submit that the Order XXI Rule 48 will not applicable to the present case. The explanation to the Order XXI Rule 48(a) says that the authority of the Port Trust of major ports also covered only Rule 48 and not Rule 48(a). Therefore, the learned District Munsif, Alandur Court has got the jurisdiction to execute the decree and need not transmit the decree to the City Civil Court. Further, the learned counsel for the respondent would submit that the petitioner has preferred an appeal with delay, even the petitioner has not filed any petition to condone the delay in filing the appeal and the appeal has not been taken up on file. There is no stay order passed by the Appellate Court. Therefore, under the circumstances, the executing Court need not wait till the disposal of the appeal.

6. Heard both sides and perused the records.

7. It is not in dispute that the decree passed against the revision petitioner. Though the learned counsel for the petitioner has stated that the decree was under challenged, but, admittedly, even the said appeal has not yet been taken on file, since the petitioner has preferred an appeal with delay. Since there was no stay and also the executing Court need not wait till the outcome of the appeal. The Apex Court and this Court, time and again reiterated that if there is no stay granted either by the Appellate Court or by the revisional court, the executing Court need not wait for the outcome of either the revision or the appeal. With regard to the jurisdiction, since it is an authority of the Port-Trust it comes under the explanation to the Order XXI Rule 48 of CPC. The Court in Alandur has got power to execute the decree and need not transmit to City Civil Court, Chennai.

8. Therefore, the contention raised by the learned counsel for the petitioner that the decree has got to be transmitted to City Civil Court, Chennai since the Port Trust is situated within the jurisdiction of the City Civil Court,

Chennai is not legally tennable. In view of the above, this Court does not find any illegality or infirmity in the order passed by the executing Court. There is no merit in the revision petition.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

msm

To

The Principal District Munsif,
Alandur.

+ 1 cc to MR. A.R. Nixon, Advocate Sr.46038

+ 1 cc to Mr. P. Dhanasekaran, Advocate Sr.46498

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KK(CO)
EU(28/08/2018)



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