

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.76 of 2017 and
C.M.P.Nos.412 &1433 of 2017

M/S.R.Tech Industries
Rep. By its Proprietor,
R.Rajendra Babu,
Having office at
No.3/88, Mount Poonamallee Road,
Ramapuram, Chennai - 600 089.

... Petitioner

Vs.

1. K.Radhalakshmi
2. K.Ramesh Boopathy

... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the order dated 22.12.2016 passed in E.P.No.38 of 2015 in O.S.No.242 of 2008 on the file of the learned Subordinate Judge, Poonamalle.

For Petitioner : Mr.R.Venkata Varathan

For Respondents : Mr.P.Subba Reddy

ORDER

The relief sought for in this revision is to set aside the order dated 22.12.2016 passed in E.P.No.38 of 2015 in O.S.No.242 of 2008 on the file of the learned Subordinate Judge, Poonamalle.

2. The respondents filed a suit against the revision petitioner in O.S.No.242 of 2008 before the learned Sub Court, Poonamallee in which they obtained a decree on 18.08.2014. For executing the decree, the respondents filed the execution petition in E.P.No. 38 of 2015 before the Subordinate Judge, Poonamalle. In the said application the Executing Court has ordered delivery, and the revision petitioner challenged the order passed by the Executing Court for delivery.

4. The learned counsel for the petitioner would submit that he has challenged the decree passed by the trial Court in O.S.No.242 of 2008 on the file of the District Musif, Thiruvallur at Poonamalle.

5. Aggrieved against the order he filed an application under Section 5 of the limitation Act . Subsequently, the application was allowed and now the appeal is pending in unnumbered A.S.Sr.No.7268 of 2014 before the learned Principal District and Sessions Court, Thiruvallur. Since the appeal is pending, if the delivery was ordered and it is effected, the petitioner would be prejudiced. Therefore, the learned counsel for the revision petitioner prays to set aside the order passed by the E.P.Court.

6. The learned counsel for the petitioner would submit that the appeal filed against the Judgment and decree passed by the Executing Court is pending before the District Judge, Poonamalle in earlier cases there are some other tenants who have filed the second appeals are pending before this Court. In the second appeal, this Court has passed a conditional order in which the arrears of the amount has to be deposited before the trial Court. Therefore, the learned counsel prays this Court that in this case also similar order may be passed by this Court.

7. The learned counsel for the respondents would submit that there are arrears of 96 months which comes around for a sum of Rs.6,69,000/-.

8. Heard both sides and perused the materials on record.

9. It is not in dispute that now the revision petitioner filed an appeal as against the judgment and decree passed by the trial Court in O.S.No.242 of 2008 on the file of Subordinate Judge, Poonamalle before the Principal District & Sessions Court, Thiruvallur. Since, the appeal in unnumbered A.S.Sr.No.7268 of 2014 is pending and also taking into consideration the earlier cases, that some of the tenants filed second appeal. In the second appeal this Court has

passed the conditional order to deposit the arrears of amount before the trial Court.

10. Therefore, the admitted fact in this case is that the appeal in A.S.SR.No.7268 of 2014 is pending before the Principal District and Sessions Court, Thiruvallur. Therefore, this Court is inclined to pass the similar order on the same lines, which is passed in the second appeal with following condition:

"The revision petitioner is directed to deposit a sum of Rs.6,69,000/- within a period of three weeks from today, failing which the Executing Court is directed to proceed with the case in accordance with law."

12. With the above direction, this Civil Revision petition is disposed of. Consequently, connected Miscellaneous petitions are closed. No costs.

सत्यमेव जयते

28.06.2018

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Note : Issue Order copy on 02.07.2018

Index:Yes/No

Speaking Order/Non speaking Order

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To

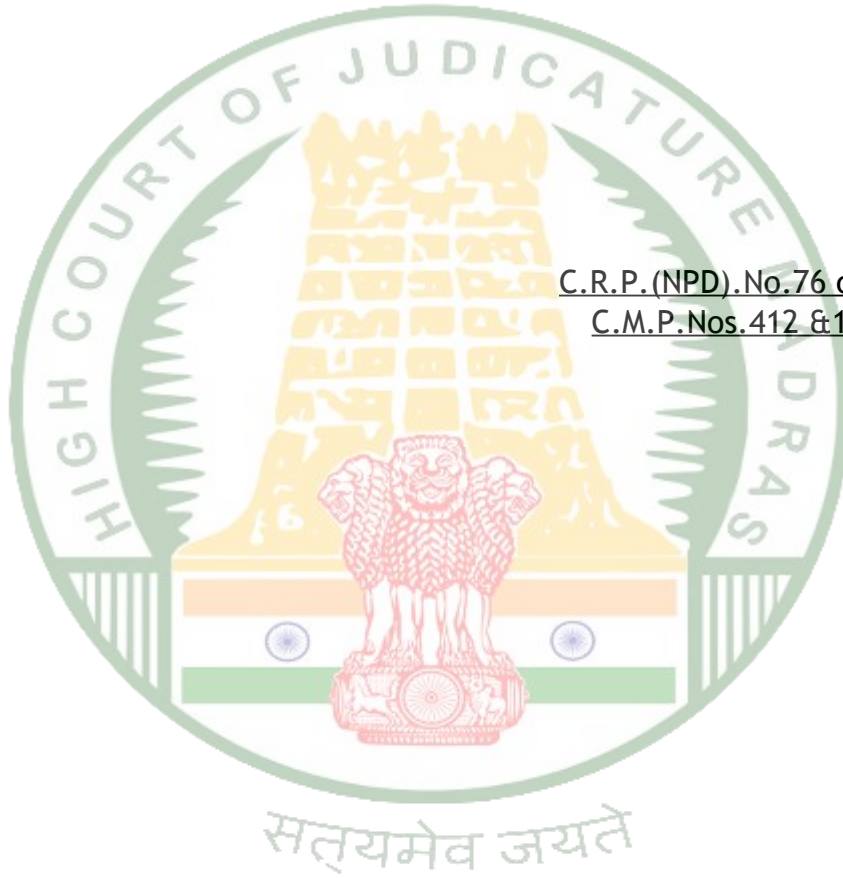
The Subordinate Judge,
Poonamalle.



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P.VELMURUGAN, J.,

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