

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.745 & 746 of 2015

A.K.Ponnusami

.. Petitioner in
both C.R.Ps.

Vs.

Seenuvasan

.. Respondent in
both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 10.06.2014 made in E.A.Nos.20 & 21 of 2013 respectively in E.P.No.32 of 2011 in O.S.No.12 of 2005 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.K.Rajasekaran

For Respondent : No appearance

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 10.06.2014 made in E.A.Nos.20 & 21 of 2013 respectively in E.P.No.32 of 2011 in O.S.No.12 of 2005 on the file of the Principal District Judge, Villupuram.

2.The parties and the issues involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioner/decreed holder filed E.P.No.32 of 2011 to execute the decree dated 01.04.2009 obtained by him in the suit O.S.No.12 of 2005 filed by him for specific performance. The suit was decreed on 01.04.2009. The petitioner filed E.P.No.32 of 2011 to implement the decree. The Execution Court ordered delivery of the suit property. The respondent/judgment debtor filed two applications in E.A.No.20 of 2013 to recall the delivery warrant already issued by the Court in E.P.No.32 of 2011 on the decree and judgment dated 01.04.2009 passed in favour of the petitioner for specific performance of agreement of sale and E.A.No.21 of 2013 for stay of the proceedings to the delivery order in E.P.No.32 of 2011 till the disposal of M.P.No.1 of 2013. According to the respondent, he has filed First Appeal A.S.SR.No.57148 of 2013 against the judgment and decree dated 01.04.2009 of Trial Court made in O.S.No.12 of 2005 along with M.P.No.1 of 2013 for condoning the delay in filing the appeal. In view of the said submission, the Execution Court stayed all further proceedings in E.P.No.32 of 2011 till the disposal of M.P.No.1 of 2013.

4. Against both the orders dated 10.06.2014 made in E.A.Nos.20 & 21 of 2013 respectively in E.P.No.32 of 2011 in O.S.No.12 of 2005, the present two Civil Revision Petitions are filed by the petitioner.

5. The learned counsel for the petitioner contended that the Executing Court can grant stay of E.P only for a reasonable period to enable the judgment debtor to obtain the order of Court through Trial Court. While granting stay, the Executing Court must direct the judgment debtor to furnish security. The learned counsel for the petitioner further contended that M.P.No.1 of 2013 filed by the respondent was ordered, condoning the delay in filing the first appeal and first appeal has been numbered as A.S.No.71 of 2015. This Court has not granted any stay of the judgment and decree of the Trial Court.

6. Heard the learned counsel for the petitioner and perused the materials available on record. The learned counsel for the petitioner submitted that M/s.S.R.Sumathy entered appearance in A.S.No.71 of 2015. As directed by this Court, the Registry had printed the name of M/s.Sumathi, who appeared for the respondent in the A.S.No.71 of 2015. Today, there is no representation for the respondent either in person or through counsel.

7.The respondent/judgment debtor prayed stay of the delivery warrant as well as the E.P on the ground that he has filed first appeal and also M.P.No.1 of 2013 to condone the delay in filing the appeal. Based on such statement, Executing Court granted stay of the E.P. The contention of the learned counsel for the petitioner is that Executing Court can grant stay of E.P only for a reasonable time on producing security to enable the judgment debtor to obtain stay from the Appellate Court. The said submission has considerable force. Further, the learned counsel for the petitioner has submitted that this Court did not grant any stay of the judgment and decree of Trial Court dated 01.04.2009 in A.S.No.71 of 2015 filed by the respondent. There is no representation on behalf of the respondent and hence, this contention is not denied. For the above reasons, both the impugned orders of the Executing Court are set aside. The learned Judge is directed to proceed with the Execution Proceedings.

8.In the result, both the Civil Revision Petitions are allowed.

No costs.

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Index :: Yes/No

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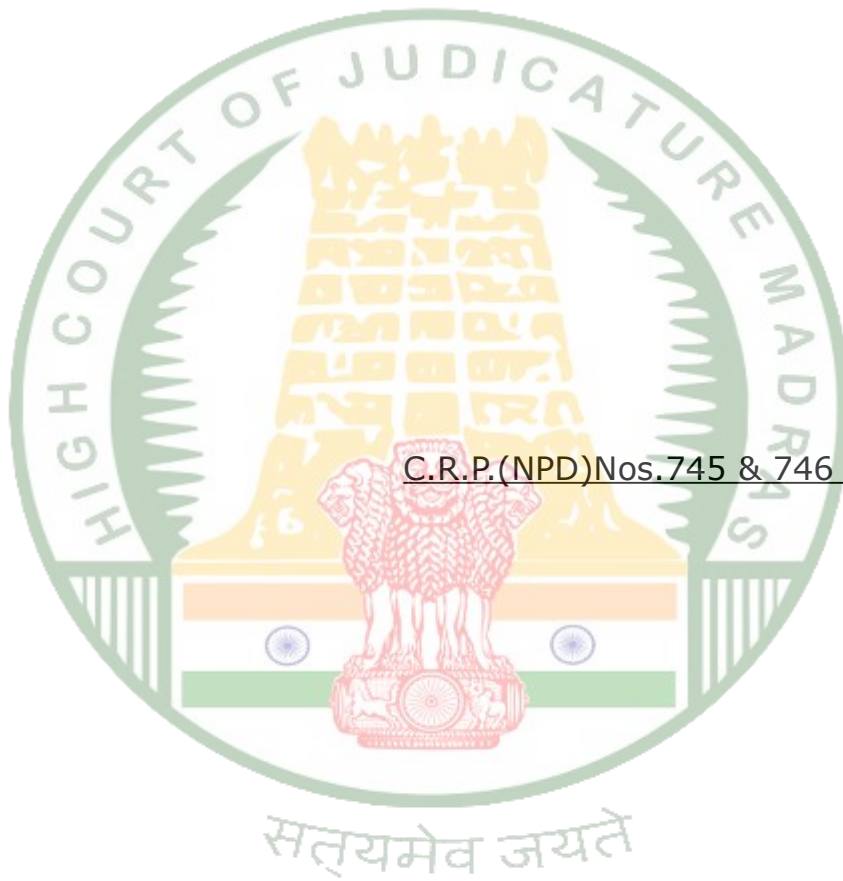
The Principal District Judge,
Villupuram.



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V.M.VELUMANI,J.

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