

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.11.2018	Delivered on 03.12.2018
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CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

CMP Nos.14823 of 2018 & 14590 of 2017
in
O.S.A.Nos.214, 215 & 309 of 2017

S.Sarojini

...Petitioner
in both CMPs

Vs.

1.P.Mariappan

2.The Assistant Engineer,
Tamil Nadu Electricity Board-33 KVA-SS.,
No.28, Raghava Reddy Colony West Street,
Jafferkhanpet,
Chennai-600 083.

... Respondents
in both CMPs

Petition is filed under Order XIV Rule 8 of the O.S. Rules read with under Section 151 of Civil Procedure Code, to permit the petitioner to deposit the amount of Rs.3,28,055/- (Rupees Three Lakhs Twenty Eight Thousand and Fifty Five Only] as per judgment and Decree in O.S.A.No.215 of 2017 dated 29.06.2018 before this Court or by another mode of payment as may be directed by this Court, and direct the Respondents to pay a sum of Rs.1000/- per day as interim damages for unlawful use and occupation and also for compensation towards wandering physical difficulty.

OSA Nos.215/2017 filed under order XXXVI Rule 1 of the O.S. Rules r/w clause 15 of the Letters patent against the decree and Judgment passed by this Court dated 17/2/2017 made in Tr.C.S.Nos.279/2011 CS No.329/2010.

For Petitioner : Mr.T.Karunakaran

For Respondents : Mr.A.Umasankar

ORDER

N.ANAND VENKATESH., J.

This Court while passing a common judgment in O.S.A.Nos.214, 215 & 309 of 2017, disposed of the appeals in the following manner.

"(i) The judgment and decree of the learned Single Judge in Tr.C.S.No.279 of 2011 is hereby set aside.

(ii) The judgment and decree of the learned Single Judge in C.S.No.329 of 2010 insofar as denying the relief of delivery of possession to the first respondent is hereby set aside and the appellant is directed to hand over possession of the suit property to the first respondent within three months from the date of this judgment.

(iii) The second portion of the judgment and decree in C.S.No.329 of 2010 relating to damages is confirmed and the appellant is directed to comply with the order of the learned Single Judge viz. Rs.7,05,000/- and further continue to pay the damages at the rate of Rs.15,000/- per month [Rupees Fifteen Thousand Only] from March 2017 till the date of handing over possession of the suit property to the respondent.

(iv) The appellant is entitled to refund of a sum of Rs.4,22,000/- [Rupees Four Lakhs Twenty Two Thousand Only] with interest from December 2006 till February 2017 at the rate of 9% p.a. and at the rate of 6% p.a. from March 2017 till June 2018 and this amount shall be paid by the first respondent to the appellant within a period of eight weeks from the date of this judgment.

(v) There is already an amount of Rs.16,58,000/- [Rupees Sixteen Lakhs Fifty Eight Thousand] lying to the credit of C.S.No.329 of 2010. The total amount of damages payable by the appellant to the respondent can be adjusted in the amount lying to the credit of C.S.No.329 of 2010. The first respondent will be permitted to withdraw the amount of damages appropriated from the

deposit already lying in the suit. The entire balance amount can be refunded to the appellant.

(vi) In other aspects the Judgment and Decree of the learned Single Judge in C.S.No.329 of 2010 is confirmed".

2. After passing of the judgment, the petitioner attempted to refund the advance amount with interest to the first respondent, which after calculation, worked out to a sum of Rs.3,28,055/- [Rupees Three Lakhs Twenty Eight Thousand and Fifty Five Only]. However, the petitioner was not able to make the payment since the first respondent was evading the same.

3. Left with no other option, the petitioner filed the above Civil Miscellaneous Petition seeking for a permission of this Court, to deposit a sum of Rs.3,28,055/- [Rupees Three Lakhs Twenty Eight Thousand and Fifty Five Only], as per the common judgment.

4. The petition came up for hearing before this Court on 24.08.2018, and this Court passed the following order.

"As per paragraph 35(iv) of the judgment dated 29.06.2018, the petitioner/appellant was directed to refund a sum of Rs.4,22,000/- with interest from December 2006 till February 2017 at the rate of 9% per annum and 6% per annum from March 2017 till June 2018 to the first respondent within a period of eight weeks from the date of judgment. In compliance to the said direction, when the petitioner is liable to pay the balance sum of Rs.3,28,055/- to the first respondent after adjusting the amount lying to the credit of C.S.No.329 of 2010, the amount sent by the petitioner through cheque was returned as unclaimed. Hence, the petitioner has come before this Court seeking permission to deposit the balance amount of Rs.3,28,055/-, as the time to make the payment expires today.

2. Since it is represented that the first respondent has taken the bundle from the counsel on record and given change of vakalat, it is appropriate to print the name of the first respondent in the cause list when he has been served in this application, as is evident from the acknowledgement filed before this Court by way of affidavit of service.

3. Since the time granted already to make the payment expires today, the same is extended. Registry is directed to print the name of the first respondent and call the matter on 11.09.2018. It is open to the learned counsel for the petitioner again to inform the first respondent about the posting of the matter on 11.09.2018".

5. In the meantime, the wife and two sons of the first respondent had filed O.S.No.3310 of 2018, before the XI Assistant City Civil Court at Chennai, seeking for the relief of a permanent injunction against the petitioner and the first respondent, not to disturb their possession and enjoyment of the suit property.

6. When the matter came up for hearing before this Court on 11.09.2018, the above development was brought to the notice of this Court. This Court passed the following order on the said day.

"It seems that in order to overcome the order passed by this Court in OSA Nos.214, 215 & 309 of 2017, dated 29.06.2018, the 1st respondent had set up his children and filed a suit in OS.No.3310 of 2018 on the file of the learned XI Assistant City Civil Court, Chennai, seeking permanent injunction. In the said Suit, an application in I.A.No.8581 of 2018 has been taken out by the appellant/petitioner, to reject the plaint. The learned XI Assistant Judge, City Civil Court, Chennai, after hearing argument had posted the matter for orders, today.

2. In any event, the 1st respondent should not have set up his children to file a Suit and that itself prima facie would amount to abuse of process of law. Therefore, the further proceedings in OS.No.3310 of 2018 on the file of the learned XI Assistant City Civil Court, Chennai is stayed. The learned counsel for the appellant/petitioner is directed to file a memo to that effect that the proceedings before the trial court in OS No.3310 of 2018 is stayed by this Court.

Registry is directed to call for the records and post the matter on 14.09.2018".

7.The wife and two sons of the first respondent came to know about the above Order passed by this Court and engaged a counsel in order to explain that they were kept in dark and they were never informed about the pending litigation and the judgment passed by this Court.

8. When the matter came up for hearing on 18.09.2018, the counsel representing the wife and two sons of the first respondent, explained before this Court about the fact that the first respondent had left them in the year 2011 itself, and he is living elsewhere and they were not aware of the judgment passed by this Court. This Court therefore directed the wife and two sons of the first respondent to appear before this Court and given an undertaking to vacate the suit property. The wife and two sons of the first respondent appeared before this Court on 19.09.2018, and filed individual affidavits of undertaking before this Court. The first respondent also appeared in person.

9.It will be relevant to extract the portions of the affidavit of undertaking filed by the wife of the first respondent.:-

"2. I submit that, I had filed the above suit against the appellant and Respondent int he above OSA, seeking for Injunction not to disturb my possession in Flat No.F-5, First Floor, Anubhav Apartment, 11/9, Ramapuram Ramaswamy Apartment, West Saidapet, Chennai-600 015 (hereinafter referred to as Suit Property) without following due process of law.

3. I submit that the appellant had filed application, I.A.No.8581 of 2018 for Rejection of Plaint in the above suit and it was only after going through the averments made in their application, did I come to know about the litigations between the Petitioner herein and the Respondent herein in respect of the Suit Property. I submit that though I have been in possession of the property, my husband (the Respondent herein) has neither been residing in the property since 2011 nor has he informed me about the above litigations hence I was unaware of the same.

4. On 18.09.2018, my counsel has appeared on my behalf int he above OSA before this Hon'ble Court and presented the typed set of Documents. I was informed by my counsel that after hearing, this Hon'ble Court was pleased to direct me to appear before this Hon'ble Court on 19.09.2018 and file an affidavit of

undertaking to vacate the Suit Schedule Property bearing address Flat No.F-5, First Floor, Anubhav Apartment, 11/9 Ramapuram Ramaswamy Apartment, West Saidapet, Chennai-600015 and hand over the same to the appellant herein.

5. In compliance with the direction of this Hon'ble Court I humbly pray that this Hon'ble Court may be pleased to give me reasonable time to enable me to seek an alternate place of residence by considering my position annexed in my typed set filed before this Hon'ble Court.

6. Therefore I further undertakes that I will not seek any extension of time to vacate and hand over the vacant possession to the appellant after this Hon'ble Court fixing the date of vacating the premises and pass such further or other orders as this Hon'ble Court may deem fit proper and thus render justice.

Similar undertaking has been given by the sons of the first respondent.

10.The matter again came up for hearing before this Court on 23.11.2018, and this Court heard the learned counsel for the petitioner, and the counsel representing the wife and two sons of the first respondent. This Court also heard the first respondent who appeared as a party in person.

11.The learned counsel for the petitioner would submit that as on date, the petitioner is liable to pay a sum of Rs.2,83,055/- [Rupees Two Lakhs Eighty Three Thousand and Fifty Five Only] to the first respondent. The learned counsel also submitted a memo of calculation in this regard and the same is extracted hereunder:

MEMO OF CALCULATION AS ON 01/08/2018

1.	Period August 2006 to August 2018	145 Months
2.	Damages per Month	Rs. 15,000/-
3.	Total damages	Rs.21,75,000/-
4.	Amount received in C.S.No.329 of 2010	Rs.16,58,000/-
5.	Balance to be paid by P.Mariappan	Rs. 5,17,000/-
6.	Amount ordered (As per Decree S.Sarojini liable to pay)	Rs. 8,45,055/-

1.	Period August 2006 to August 2018	145 Months
7.	Balance (6-7) (to be paid by S.Sarojini)	Rs. 3,28,055/-

CALCULATION AS ON DATE 23/11/2018

1.	Balance	Rs.3,28,055/-
2.	Damages for Sep-2018 to Nov-2018 (Total 3 Months)	Rs. 45,000/-
	Total Balance (As per Decree S.Sarojini liable to pay)	Rs.2,83,055/-

12.The above memo of calculation was prepared based on the judgment of this Court passed in the above OSAs on 29.06.2018. The learned counsel for the petitioner submitted that the first respondent is refusing to receive the amount and even when an attempt was made to send the demand draft by post, the same was also returned. Therefore, the learned counsel would submit that the petitioner must be permitted to deposit the amount of Rs.2,83,055/- [Rupees Two Lakhs Eighty Three Thousand and Fifty Five Only] before this Court.

13.The first respondent who appeared in person contended that he is entitled for a much higher amount and requested this Court that he must be given possession of the suit property.

14.The learned counsel representing the wife and two sons of the first respondent would submit that the suit filed in O.S.No.3310 of 2018, on the file of the XI Assistant City Civil Court, Chennai, will no longer be prosecuted and the same can be struck off by this Court. The learned counsel further submitted that three months time may be granted for the purpose of vacating the premises and handing over possession to the petitioner.

15.This Court has carefully considered the submissions made and also the materials available on record. The common judgment passed by this Court in the above OSAs has become final, and therefore the parties are bound by the same. The claim made by the first respondent that he is entitled for a higher amount than what was submitted by the learned counsel for the petitioner, by way of memo of calculation, is not sustainable since the memo of calculation has been prepared in accordance with the judgment of this Court passed in the OSAs and the first

respondent was not able to bring to the notice of this Court any mistake/discrepancy in the memo of calculation submitted by the petitioner before this Court. The second request made by the first respondent that possession of the suit property must be handed over to him is also unsustainable since the suit filed by the petitioner in C.S.No.329 of 2010, has been decreed as prayed for by this Court and the suit filed by the first respondent in Tr.C.S.No.279 of 2011 was dismissed by this Court, by the common judgment dated 29.06.2018, passed in above OSAs. Therefore, the first respondent cannot make any request contrary to the relief granted by this Court. Hence, both the submissions made by the first respondent, who appeared in person before this Court, is hereby rejected.

16.This Court takes on record the individual affidavit of undertaking filed by the wife and two sons of the first respondent. In view of the undertaking given by them, this Court grants three months time, from the date of receipt of the copy of this order, to vacate and hand over possession of the suit property to the petitioner. This Court makes it clear that the parties shall strictly abide by the undertaking given before this Court, and this Court will not entertain any petition in future seeking for any extension of time to vacate and hand over the vacant possession of the suit property. In view of the undertaking given by the parties and in view of the submissions made by the counsel representing the wife and two sons of the first respondent, the suit in O.S.No.3310 of 2018, on the file of the XI Assistant City Civil Court, Chennai, is hereby struck off from the file of the Court.

17.On consideration of the submissions made by the learned counsel for the petitioner, this Court is satisfied that the first respondent is not willing to receive the amount payable by the petitioner. Therefore, left with no other option, the petitioner is directed to deposit the sum of Rs.2,83,055/- [Rupees Two Lakhs Eighty Three Thousand and Fifty Five Only], within a period of one week from the date of receipt of a copy of the order, in the name of the Registrar General. On such deposit, the Registry is directed to deposit this amount in a fixed deposit for a period of one year. It is left open to the first respondent to withdraw the above said amount with accrued interest at any point of time by filing an appropriate application for payment out. If the first respondent does not chose to withdraw the amount within one year, the fixed deposit shall be renewed every year, till the first respondent chooses to withdraw the amount.

The Civil Miscellaneous Petition filed by the petitioner is accordingly disposed of. Consequently, CMP No.14590 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

- 1.The Registrar General,
High Court, Madras.
- 2.The Sub Assistant Registrar,
Original Side Section,
High Court, Madras-600 104.
- 3.The Section Officer,
Accounts Section,
High Court, Madras.

+1cc to Mr.A.Umasankar, Advocate SR.NO..83557
+3cc to Mr.T.Karunakaran, Advocate4 SR.NO..83004

CMP Nos.14823 of 2018 & 14590 of 2017
in
O.S.A.Nos.214, 215 & 309 of 2017

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