

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.R.P.PD.No.3495 of 2018
and
C.M.P.No.19606 of 2018

Noorjehan Subhani

... Petitioner

Vs

1. Mohammed Usman
2. Mohammed Affan Nouman
- Mohammed Akthar (Died)
3. Ayesha Yasmin
4. Mohammed Subhan
5. Saleema Begum
6. H.A.Younus
7. Ameena Fathima
8. Zainab Fathima
9. Mohammed Ashraf
10. Mohammed Azeez
11. Mohammed Yousuf
12. Mohammed Ismail
13. Mohammed Iqbal
14. Madiha Fathima (Minor)
15. Zunaira Fathima (Minor)

... Respondents

[Respondents 14 and 15 are minors and are represented
by their mother and natural guardian]

[Cause title accepted vide Court order dt.23.10.2018
made in C.M.P.No.18398 of 2018 in C.R.P.SR.No.74260
of 2018 (MSRJ)]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 09.03.2018 made in Tr.O.P.No.144 of 2017 on the file of the Principal Judge, City Civil Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr.N.Ishtiaq Ahmed

ORDER

The order and the decretal order dated 09.03.2018 made by the Principal Judge, City Civil Court, Chennai, in Tr.O.P.No.144 of 2017, is under challenge in the present revision petition.

2.The revision petitioner is the petitioner in Tr.O.P.No.144 of 2017 on the file of the Principal Judge, City Civil Court, Chennai. The 5th respondent filed a suit in O.S.No.4352 of 2012 for partition and the said suit is pending before the VII Additional City Civil Court, Chennai. The revision petitioner herein, filed another civil suit in O.S.No.5971 of 2016 before the IV Assistant City Civil Court, Chennai for declaration, to declare the settlement deed executed by the 1st defendant therein, standing in favour of the 2nd defendant therein, and also the settlement deed executed by the 3rd defendant therein, in favour of the 4th

defendant therein, both dated 30.10.2015, as null and void and for permanent injunction. The revision petitioner filed Tr.O.P.No.144 of 2017 before the Principal Judge, City Civil Court, Chennai, to transfer the suit filed in O.S.No. 5971 of 2016 along with O.S.No.4352 of 2012.

3.The learned counsel on behalf of the revision petitioner made a submission that the evidence is likely to be adduced in O.S.No.5971 of 2016, which will have an impact in respect of the merits and demerits of the suit in O.S.No.4352 of 2012. Thus, the joint trial of these two suit is imminent. Thus, the petitioner was constrained to move the transfer petition.

4.The learned counsel for the petitioner contends that on account of certain unavoidable circumstances, the petitioner was unable to pursue the transfer petition before the Principal Judge, City Civil Court, Chennai. Therefore, the order and decretal order stated above, has to be set aside.

5.On a perusal of the order, this Court is of an opinion that the transfer application was filed on 17.11.2017 and thereafter, the revision petitioner had committed continuous default. The short order passed by the Principal Judge, City Civil Court, Chennai, reads as under:

"This petition has been filed U/s. 24 of C.P.C. to withdraw the suit in O.S.No.5971 of 2016 from the file of IV Assistant City Civil Court, Chennai and transfer to the file of VII Additional City Civil Court, Chennai to try/jointly along with suit in O.S.No.4352 of 2012.

In the result, the petitioner has filed a Transfer Original Petition on 14.11.2017 and the same has been numbered as Tr.O.P.No.144/17 on 17.11.2017. Notice was ordered for the hearing on 24.11.2017. On 24.11.2017, R11 called absent, set exparte. Fresh notice ordered for other respondent and also ordered to Re-issue the batta for R3 for the hearing 16.12.2017. On 16.12.2017 also fresh notice ordered through Court and post for the respondents for the hearing 23.01.2018 and 23.02.2018. Batta not paid till 09.03.2018. So far the petitioner has not taken any steps for payment of batta and simply seeking adjournment. On perusal of the endorsement made in the Tr.OP that the Honourable High Court has stayed the O.S.No.4352/2012 pending in VII Additional City Civil Court, Chennai. The petitioner is prolonging the case without taking any steps. Past four months, the Tr.OP has been in the stage of batta. In these circumstances, the petition has to be dismissed for non-payment of batta. Hence this petition is dismissed."

6.The spirit of the order portrays that the revision petitioner was not vigilant in pursuing the matter and therefore, the factual inference to be drawn is

that the transfer application was filed to prolong the suit. Such an attitude of the litigants can never be entertained by the Courts. When a transfer application is filed, the party who files the application, must be vigilant in pursuing the matter and should express his *bona fide* in respect of the necessity for such transfer of the suit. In the absence of any such vigilance in pursuing the matter, the factual inference that has to be drawn up by the Courts is that, the party who files the transfer application is not interested in the transfer, but is interested only to prolong the issue for certain obvious reasons. Such an attitude of the litigants can never be encouraged by the Courts.

7. This apart, the suits once filed, must be proceeded with, at the earliest. If at all, such unnecessary applications are filed with an idea to prolong the litigation, they have to be dealt with immediately and orders must be passed by the Courts concerned. When the Courts are of the opinion that certain interlocutory applications are filed with an intention to prolong and protract the suit, then the Courts, at the first instance itself, must understand and find out the reason for filing such interlocutory applications and deal with the same without any undue delay and pass orders. Granting adjournments in such interlocutory applications for an unspecified period of time in a routine manner has to be averted.

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8.These being the principles to be followed, the revision petitioner has not expressed any *bona fide* ground for the purpose of interfering with the order and decreetal order passed by the Principal Judge, City Civil Court, Chennai, and hence, this Court is of an undoubted opinion that there is no infirmity in the said order and decreetal order.

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

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Index : Yes
Internet : Yes
Speaking order

To

The Principal Judge,
City Civil Court,
Chennai.

C.R.P.PD.No.3495 of 2018