



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD)No.370 of 2018
and
C.M.P. (MD)No.1650 of 2018

Murugan : Petitioner / Petitioner / Respondent /
Judgment Debtor / Defendant
vs.
Perumal : Respondent / Respondent / Petitioner /
Decree Holder / Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 22.12.2017 passed in E.A.No.133 of 2017 in E.P.No.18 of 2017 in O.S.No.221 of 2009 on the file of the Principal District Munsif Court, Manapparai.

For Petitioner : Mr.N.R.Balaji

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif, Manapparai in E.A.No.133 of 2017 in E.P.No.18 of 2017 in O.S.No.221 of 2009 dated 22.12.2017.

2. The facts of the case are that the respondent herein, as plaintiff, has filed a suit in O.S.No.221 of 2009, seeking recovery of possession against the petitioner herein. The said suit was set ex-parte and on 24.01.2017, an ex-parte decree was passed. Thereafter, the decree holder/respondent herein has filed execution petition in E.P.No.18 of 2017 seeking recovery. In the meantime, the petitioner has filed an interlocutory application in I.A.No.526 of 2017 under Order 9 Rule 13 of the Code of Civil Procedure (in short "Code") to set aside the ex-parte decree and the same is pending. Citing this, the petitioner has filed E.A.No.133 of 2017 under Order 21 Rule 26 of the Code to stay the execution petition till the disposal of the said interlocutory application and the same was dismissed by the trial Court.

3. The learned Counsel for the petitioner would place reliance on the judgment of this Court in the case of **M.Nazruddin vs. The Idol of Arulmigu Navaneedha Krishnasami and Durgai Ammal Vahaira Temples, represented by Trustees and others (C.R.P.No.3096 of 1998, decided on 16.11.1998)**, wherein, at Paragraph 14, it is held as follows:



"14. It is admitted by the respondents/decreed holders/plaintiffs in para 3 of the counter filed by the 5th defendant in the stay petition in E.A.No.778 of 1998 before the execution court in the following words:

"Even in the trial court, the petition to set aside the ex parte decree is only in the SR stage and that too it has been filed after execution petition. Therefore there is no possibility of getting any stay".

Therefore it is conceded by the respondents/decreed holders/plaintiffs that there is no possibility of getting any stay on the trial side in this case, where an application to set aside the ex parte decree is pending. In such an event the remedy that is available to the judgment debtor is only in the execution court by invoking O.21, Rule 26 of C.P.C. A person who has a right, must have a remedy. In other words if the judgment debtor has no remedy to get any stay of execution of decree on the trial side by virtue of the pendency of petitions under Sec.5 of the Limitation Act under O.9, Rule 13 of C.P.C., it cannot be said that he has no remedy also on the execution side, which will result in the position that the judgment debtor/defendant cannot get stay either from the trial court or from the execution court and which will result in the process of elimination of the judgment debtor/defendant from the lis itself. If that is so, then it amounts to injustice being done to a party to the suit. Therefore the trial court or the execution court must grant stay for execution of ex parte decree for a limited period till the disposal of the applications filed under Sec.5 of the Limitation Act and under O.9, Rule 13 of C.P.C. In my view O.21, Rule 26 of C.P.C. will empower the execution court or the transferor court to grant stay of execution of ex parte decree for a reasonable time so as to enable the judgment debtor to get further orders from the trial court either on the applications under Sec.5 of the Limitation Act or under O.9, Rule 13 of C.P.C."

But, the Court below, without appreciating the same, has erroneously dismissed the said petition and therefore, he prays for interference.

4. Heard the learned Counsel appearing for the petitioner and perused the documents placed on record. Notice to the respondent is dispensed with.

5. It is seen that the petitioner has filed the E.A., petition by invoking the provisions in Order 21 Rule 26 of the Code. The said proviso reads thus:

"The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the Court by which the decree was passed..."



6. This Court in the judgment reported in **(2010) 4 LW 512**, has held that when the Executing Court and the Court which passed the decree are one and the same, then Order 21 Rule 26 of the Code cannot be invoked. This decision was upheld by this Court in one another judgment reported in **CDJ 2013 MHC 5274**, wherein, it is held that Order 21 Rule 26 of the Code cannot be invoked on the execution side when the execution petition has been filed in the very same Court which passed the decree. In the present case on hand, the decree was passed by the same Court, where the execution petition is pending and therefore, this Court is of the view that the judgment relied upon by the petitioner (cited supra) does not apply to the present case on hand.

7. Moreover, the Hon'ble Apex Court in the judgment reported in **AIR 2001 SC 279**, has held that decree becomes enforceable from the date of passing and mere preferring of an appeal does not act as a stay on the decree. In the present case on hand, though I.A.No.526 of 2017 was filed to set aside the *ex-parte* decree, the said interlocutory application is kept pending, without any action and therefore, the same does not confer any right to the petitioner to stall the execution proceedings.

8. Citing these decisions of the Hon'ble Apex Court as well as this Court, the learned Principal District Munsif, Manapparai has rightly dismissed the petitioner's plea, which, in my considered view, does not deserve any interference.

9. In result, this Civil Revision Petition stands dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Principal District Munsif,
Manapparai.

+1cc to Mr.N.R.Balaji, Advocate Sr.No.50452

GK
VB/SV/MMS/SAR3/09/03/2018/3P/3C

C.R.P. (PD) (MD) No.370 of 2018
21.02.2018