



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Thursday, the Twenty Sixth day of July Two Thousand and Eighteen
PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.6399 of 2018

IN

CRP(MD) No.2447 of 2017

WEB COPY

1.VYAKULAM

C.RAMACHANDRAN (DIED)

2.MANJULA DEVI (MINOR)

3.SASIKALA (MINOR) ,

4.BALAMURUGAN (MINOR) ,

(Minors 2 to 4 are represented by
their guardian 1st petitioner as
per the order in I.A.No.1701 of 1979
dated 24.10.1979)

...Petitioners/Respondents 1 to 4/Defendants 1 to 4

Vs.

KAMALAMMAL NADATHY (DIED)

1.JOHN MARY,

2.JOSEPH RAJAN,

...Respondents/Petitioners 1 and 2/Plaintiffs 2 & 3

Prayer in CMP(MD). 6399/ 2018 :

This Petition filed to extend the time as granted in C.R.P. (NPD) (MD) NO.2447 of 2017 dated 13.03.2018 on the file of this Hon'ble Court till the disposal of S.A.NO.739 of 2008, S.A.NO.740 of 2008 and S.A.(MD).No.1032 of 2008 on the file of this Hon'ble Court by considering the Petitioners age (70), health condition and as the Petitioners children are not taking care of her and pass and orders or further orders this Hon'ble Court.

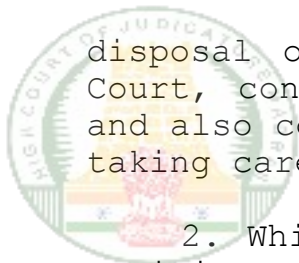
Prayer in CRP(MD). 2447/ 2017 :

Petition filed under section 115 of the Civil Procedure Code to set aside the fair and decreetal order in EP.No.118 of 1983 in OS.No.485 of 1979 dated 02/08/2017 on the file of the Principal District Munsif, Kuzhithurai, Kanyakumari District.

ORDER:

This Petition is coming on for orders on this day and upon perusing the petition, affidavit filed in support thereof and upon hearing the arguments of Mr.S.Saji Bino, Advocate for the petitioners and of Mr.C.Godwin Advocate for the the respondents, the Court made the following order:

This petition has been filed by the petitioners / defendants seeking permission of this Court to extend the time granted in C.R.P.(MD).No.2447 of 2017, vide order dated 13.03.2018, till the



disposal of S.A.Nos.739, 740 & 1032 of 2008 on the file of this Court, considering the first petitioner's age and health condition and also considering the fact that the petitioner's children are not taking care of her.

2. While disposing of the Civil Revision Petition filed by the petitioners / defendants challenging the order passed in the execution petition by the trial Court, this Court, vide order dated 13.03.2018, has held as follows:

"3. When the matter came up for admission, this Court was not inclined to admit the revision or to grant interim order and therefore, the learned counsel for the petitioners prayed time for vacating the premises, for which, the learned counsel for the respondents did not have any objection.

4. The learned counsel for the petitioners would submit that challenging the fair and decreetal order, second appeals have been preferred and the same are pending before this Court. Now, they have filed an undertaking affidavit, dated 16.12.2017, before this Court, undertaking that they would vacate the premises and hand over the vacant possession to the respondents within a period of six months.

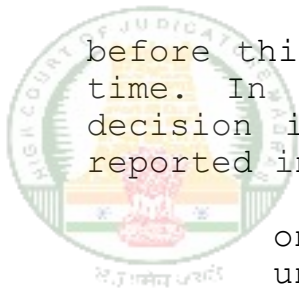
5. In view of the above undertaking affidavit, the petitioners are directed to vacate the premises and hand over the vacant possession to the respondents on or before 30.06.2018. Till such time, the petitioners shall pay the monthly rent on or before 5th of every English calendar month."

3. Only on considering the old age of the first petitioner and also considering the undertaking affidavit filed by the petitioners, this Court had granted time to vacate the premises till 30.06.2018. Now the said period is lapsed. Having failed to keep up their undertakings, now the petitioners have come up with this petition for the aforesaid prayer.

4. Today, the learned counsel for the petitioners submitted that as against the order passed in the Civil Revision Petition, the petitioners are taking steps to prefer an appeal before the Hon'ble Supreme Court and further considering the age and health condition of the first petitioner, the time limit granted by this Court to vacate the premises may be extended.

5. The learned counsel appearing for the respondents strenuously objected to the above said contention.

6. Admittedly, in this case, the petitioners have filed an undertaking affidavit, dated 16.12.2017, seeking six months time to vacate the premises. Based on the said undertaking, this Court has granted time till 30.06.2018. Having breached the undertaking given



before this Court, now they cannot seek the relief of extension of time. In similar circumstances, the Hon'ble Supreme Court in a decision in Noorali Babul Thanewala vs. K.M.M.Shelly and others, reported in (1990) 1 SCC 259, has held as follows:

"When a Court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt."

7. The decision, cited supra, is squarely applicable to this case. From the above decision, it is clear that the petitioners have committed clear contempt of Court. However, considering the age of the first petitioner and also considering the request of the learned counsel for the petitioners, instead of issuing any contempt notice, this Court directs the petitioners to vacate the premises forthwith and hand over vacant possession.

8. In view of the above, this miscellaneous petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The Principal District Munsif,
Kuzhithurai, Kanyakumari District.

+ 1 CC TO Mr.C.GODWIN , ADVOCATE IN SR No. 75154.

ORDER DATE :26/07/2018

ORDER

CMP(MD) No.6399 of 2018

IN

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