



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.1568 of 2013

and

M.P (MD) .No.1 of 2013

WEB COPY

1.Senthil Athiban

2.Bala Punitha

... Petitioners

Vs.

L.Renganathan

... Respondent

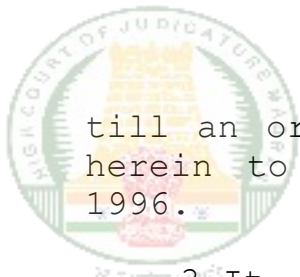
PRAYER: Civil Revision Petition filed Under Section 115 of Civil Procedure Code, against the fair and final order dated 03.01.2013 passed in E.A.No.184 of 2012 in E.P.No.2 of 2009 in O.S.No.217 of 1996 on the file of the Sub-Court, Tuticorin.

For Petitioners : Mr.S.Kadarkarai
For Respondent : Mr.B.Brijesh Kishore
for Mr.P.Sam Japa Singh

ORDER

The Civil Revision Petition is directed against the order passed by the Sub-Court, Tuticorin in execution application in E.A.No.184 of 2012 in E.P.No.2 of 2009 in O.S.No.217 of 1996.

2.The revision petitioner filed the suit in O.S.No.217 of 1996 on the file of the Sub-Court, Tuticorin for specific performance of an agreement of sale, dated 15.04.1994. The suit was decreed as prayed for. It is stated that the defendants did not execute the sale deed. It is seen that the suit was decreed *ex-parte* by judgment and decree, dated 17.07.2004. It is also submitted that the revision petitioner filed an execution petition and the executing Court passed an order for executing the sale deed on payment of entire balance sale consideration on 12.08.2011 in favour of the revision petitioners and the revision petitioners obtained a sale deed and the execution petition was also closed. Since the possession and enjoyment of the plaint schedule property was with the judgment debtor/respondent herein, it appears that the decree holder/revision petitioners herein filed an application in E.A.No.26 of 2012 for delivery of possession. During the pendency of the petition seeking delivery of possession, the respondent/judgment debtor filed an application in E.A.No.184 of 2012 under Section 151 C.P.C., to stay further proceeding in E.A.No.26 of 2012. The Lower Court allowed the petition to the effect that the proceedings in E.A.No.26 of 2012 should be stayed



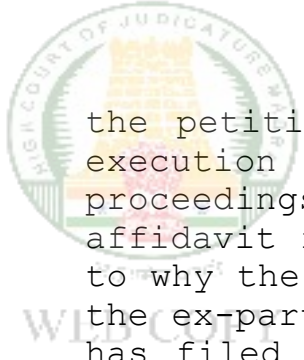
till an order is passed in the petition filed by the respondents herein to set aside the ex-parte decree made in O.S.No.217 of 1996.

3.It is stated in the affidavit filed in support of the petition in E.P.No.184 of 2012 that the judgment debtor is a practising Advocate at Madras and that due to shifting of his residence, he did not receive any notice in the suit. It is further stated that he has filed a petition to set aside the ex-parte decree, dated 17.02.2004 and that therefore, until the petition filed by him to set aside the ex-parte decree is decided, the execution proceedings in E.A.No.26 of 2012 in E.P.No.2 of 2009 should be stayed.

4.It is to be noted that the respondent has not produced any materials even before this Court to show that the petition to set aside the ex-parte decree is pending. When the matter is taken up for hearing before this Court, the learned counsel appearing for the respondent submitted that he is not able to ascertain the stage of the petition filed by the respondent to set aside the ex-parte decree. Even before the Lower Court, the particulars of the petition filed by the respondent to set aside the ex-parte was not furnished.

5.This Court is of the view that the Lower Court is not correct in passing the present order, which is challenged in this revision. In this case, the suit in O.S.No.217 of 1996 was decreed as ex-parte on 17.02.2004. Even when the revision petitioners filed a petition in E.A.No.26 of 2012 for taking possession, the judgment-debtor did not give particulars. Even after lapse of six years, the learned counsel for the respondent submits that he could not ascertain the stage, of the petition filed by the judgment-debtor under Order 9 Rule 13 CPC is pending.

6.First of all, though the Court has power to stay the execution proceedings for limited period for valid reason under Order 21 Rule 26 and Rule 29 CPC in certain circumstances, the Court cannot exercise its power, which is not conferred by any specific provision of CPC to stay the execution proceeding when no appeal is pending as in this case. Unfortunately, the stay was granted by the execution Court after a lapse of six years from the date of ex-pate decree. There is no provision either Order 21 Rule 26 or Order 21 Rule 29 of CPC to enable the Court to stay the execution proceedings for an indefinite period to enable the judgment-debtor to pursue his remedy to set aside the decree. Even the power to grant stay under Order 21 Rule 26 is only to enable the judgment-debtor to seek appropriate remedy either before the appellate forum or before the same Court within a ~~period of six months~~. In this case, admittedly, the revision petitioners have obtained a decree on 17.02.2004 and obtained a sale deed through Court in the year 2011. At the time of filing



the petition for taking possession, the respondent has filed the execution application in E.A.No.184 of 2012 to stay the further proceedings. There is no explanation for the delay and the affidavit filed in support of the petition is bereft of details as to why the petitioner has filed a petition after eight years after the ex-parte decree was passed. Even assuming that the respondent has filed a petition to set aside the ex-parte decree, the Court is not able to accept the contention of the respondent/judgment-debtor. Admittedly, the revision petitioners have obtained the sale deed and they are entitled to get delivery of possession. In case the ex-parte decree is set aside for any reason, it is open to the judgment-debtor to file a petition for re-institution. Hence, it is not as if the judgment-debtor has no remedy if an ex-parte decree is executed during the pendency of the petition filed under Order 9 Rule 13 CPC.

7. In that view of the matter, taking into account the fact that in this case ex-parte decree was passed on 17.02.2004 and the petitioner has obtained the sale deed in 2011, this Court is of the view that there is no justification in granting stay of execution proceeding till the petition filed by the respondent to set aside the ex-parte decree, is decided. Since the respondent is not diligent in getting disposal of his application and the counsel for the respondent is unable to give particulars about the petition, that is pending, this Court is inclined to pass the following orders:-

"(a) The order passed in E.A.No.184 of 2012 in E.P.No.2 of 2009 in O.S.No.217 of 1996 on the file of the Sub-Court, Tuticorin is set aside.

(b) The learned Sub-Judge, Tuticorin is directed to dispose of the E.A.No.26 of 2012 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

(c) However, no order of delivery shall be passed for a period of six weeks from the date of receipt of a copy of this order.

8. At this juncture, the learned counsel for the respondent submits that the petition filed by the respondent to set aside the ex-parte decree could not be traced, since the case bundle was transferred from the Sub-Court, Tuticorin to the Sub-Court, Thiruchendoor. Therefore, the learned Sub-Judge, Thiruchendoor is directed to consider the respondent's grievance and permit him to re-construct the papers filed by the respondent, if it is not for any reason.

<https://hdsr.cse.cbi.gov.in/home>

9. With the above directions, the Civil Revision Petition is



disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl. side)

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/True Copy/

Sub Assistant Registrar (CS-II)

To

1.The Subordinate Judge, Tuticorin.

2.The Subordinate Judge, Thiruchendoor.

+1cc to Mr.S.Kadarkarai, Advocate SR.No.72157

+1cc to Mr.B.Brijesh Kishore, Advocate SR.No.72346

Rmk

MK/KAK/SAR 2/07.08.2018/4P/5C

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