

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(NPD)No.1190 of 2008

and

M.P.No.1 of 2008

R.Prasad

.. Petitioner

Vs.

1. S.Ravi

2. R.Sulochana

3. R.T.Palanivelu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order, passed in M.P.No.588 of 2007 in E.P.No.650 of 2005 in RCOP No.467 of 2005 dated 05.02.2008 and thereby set aside the order passed in M.P.No.268 of 2006 dated 01.11.2006 and thereby restore the same on its file is contrary to the law of execution, and it is illegal, non-application of mind, perverse and in any event it is liable to be quashed.

For Petitioner : Mr.P.C.Hariharan

For R1 & R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the Fair and Decreetal order, passed in M.P.No.588 of 2007 in E.P.No.650 of 2005 in R.C.O.P No.467 of 2005 dated 05.02.2008 and thereby set aside the order passed in M.P.No.268 of 2006 dated 01.11.2006 and thereby restore the same on its file is contrary to the law of execution, and it is illegal, non-application of mind, perverse and in any event it is liable to be quashed.

2.The facts leading to file this Revision Petition is as follows:

The Revision Petitioner filed R.C.O.P.No.467 of 2005 against the tenant one R.Sulochana and others. The above R.C.O.P.No.467 of 2005 was allowed by the Court of Small Causes, Chennai on 05.02.2008. Thereafter, it appears delivery proceedings were also recorded and delivery was taken on 05.06.2006. The delivery finally recorded by the Court on 29.11.2006. In the meanwhile, it appears that one Ravi, the first respondent in the Revision Petition filed an application under Order 21 Rule 97 for obstruction.

3.It is curious to note that the above application was dismissed by the Trial Court on 01.11.2006 and the Execution Court has ordered delivery. Thereafter, the matter was adjourned to 29.11.2006, and the delivery was recorded on 29.11.2006. Thereafter, the first respondent appears to have filed an application to set aside the order of the dismissal in M.P.No.268 of 2006 filed for obstruction on the ground that the first respondent was fell sick and bed ridden and went into Coma and not in a position to attend the Court in the month of June 2006. Hence, the Execution Court allowed the above application on 05.02.2008 and the same was restored. It is curious to note that the delivery itself is recorded on 29.11.2006.

4.Heard the learned counsel appearing for the Revision Petitioner and no representation for the contesting respondents.

5.On a perusal of the records, it is seen that the Execution Petition in E.P.No.650 of 2005 was pending for effecting delivery from 27.05.2005. Thereafter, the application has taken out in M.P.No.32 of 2006 filed for removal of obstruction caused by the staff of the

Judgment debtor. The above application was allowed by the Trial Court. Thereafter, the matter was kept adjourned on various dates. In the meanwhile, the first respondent filed M.P.No.268 of 2006 in the month of June 2006 resisting delivery. The above application has also been dismissed for non prosecution on 01.11.2006 and the matter was adjourned to 29.11.2006.

6. On 29.11.2006, the Trial Court recorded that the delivery has taken by the Court bailiff and the decree holder on 05.06.2006. Thereafter, the delivery has been recorded and the Execution Petition in E.P.No.650 of 2005 was terminated once the delivery is recorded. Therefore, the question of resisting obstruction does not arise at all after delivery recorded.

7. Hence, this Court is of the opinion that the Execution Court having dismissed the application in M.P.No.268 of 2006 as early as on 01.11.2006 ought not to have restored the same. Particularly, when the delivery has been effected and the Execution Petition in E.P.650 of 2005 was terminated on 29.11.2006. Whereas the trial Court restored

the application in the month of February 2008. The order of the Execution Court was without application of mind. Hence the same is required to be interfered and the same was set aside. The Execution Court is hereby directed to terminate the Execution Petition in E.P.No.650 of 2005.

8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

07.02.2019

Index: Yes/No
Speaking/Non-Speaking

ssi

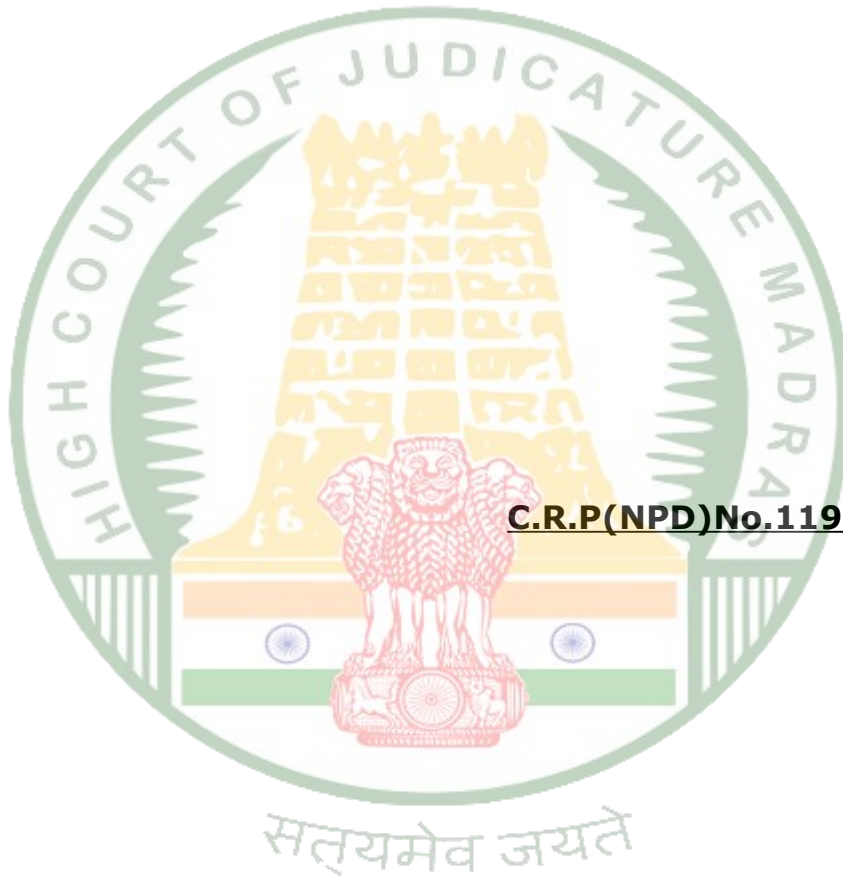
To

1. The Court of Small Causes, Chennai.
2. The Section Officer, VR Section, Madras High Court.

WEB COPY

N.SATHISH KUMAR, J.

ssi



C.R.P(NPD)No.1190 of 2008

WEB COPY 07.02.2019