



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.1220 of 2018
and
C.M.P. (MD) No.5193 of 2018

Krsna Murtii

... Petitioner/Petitioner/Plaintiff

vs.

The Chairman and Managing Director,
Tamil Nadu Small Industries
Development Corporation Limited,
Tiru.Vi.Ka.Industrial Estate,
Near Sidco Electronics Complex,
Guindy,
Chennai - 600 032.

... Respondent/Respondent /Defendant

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the docket order dated 22.03.2018 made in E.P.No.218 of 2014 in O.S.No.168 of 1989 on the file of the learned I Additional Sub Judge, Trichy.

For Petitioner : Mr.R.Krsna Murtii
party in person

For Respondent : Mr.K.S.Shangarmurali

ORDER

This Civil Revision Petition has been filed to set aside the docket order dated 22.03.2018 passed in E.P.No.218 of 2014 in O.S.No.168 of 1989 by the learned I Additional Subordinate Judge, Trichy.

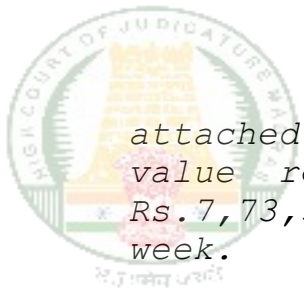
2.Before the trial Court, the petitioner herein is the plaintiff and the respondent herein is the defendant. For the sake of convenience, the parties will be referred to as per their ranks before the trial Court.

3.The order dated 22.03.2018, which is the subject matter in this case, which is aggrieved by the plaintiff, is as follows:

22.03.2018: Appearance of both parties.

<https://hcservices.ecourts.gov.in/hcservices/>

Petitioner present. Respondent side no representation. Only Court has filed it value of property



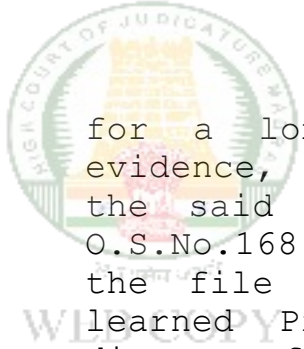
attached Rs.12,00,000/- for two lots on 15.07.2015 as per the value reduced dated 29.04.2015. E.P., claim amount is Rs.7,73,348/-. Hence, fresh test by 26.06.2018. Batta in a week.

4. The grievance of the plaintiff is that on every occasion, the delay was made by the Executing Court in proceeding with the case in spite of the order passed in C.R.P.(MD) No.587 of 2013. The plaintiff has also brought to the notice of this Court, he has filed C.R.P.(MD) No.587 of 2013 as against the order of the learned Additional District Judge, Pudukottai, dated 20.02.2013 made in I.A.No.101 of 2012 in A.S.No.9 of 2012 on the file of this Court. The above said I.A., was filed by the defendant for appointing an Advocate Commissioner and the challenge is against the appointment of Commissioner. The order of the above said C.R.P., is as follows:

9. For all the reasons stated above, this Court comes to the conclusion that the order of the lower appellate Court dated 20.02.2013 made in I.A.No.101 of 2012 cannot stand the scrutiny of the Court and the same deserves to be interfered with and set aside. Accordingly, the Civil Revision Petition is allowed and the order dated 20.02.2013 made in I.A.No.101 of 2012 in A.S.No.9 of 2012 on the file of the Additional District Judge, Pudukottai is set aside. In view of long pendency of the case, the lower appellate Court is directed to dispose of the appeal within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

5. From the records, it is seen that the plaintiff has also filed Tr.C.M.P.(MD) No.77 of 2014 seeking for transfer of E.P.No.5 of 2012 in O.S.No.168 of 1989 from the file of the Sub Court, Pudukottai to appropriate Court in Trichirappalli. In the said Tr.C.M.P., the plaintiff has contended that he has filed a suit in O.S.No.168 of 1989 against the defendant for damages of Rs.1,50,000/- and the same has been dismissed on account of limitation. Aggrieved by the dismissal of the said suit, the plaintiff filed an appeal in A.S.No.418 of 1994 and the same has been allowed by setting aside the judgment and decree passed in the said suit and remanded the case to the trial Court for fresh consideration. Further, the plaintiff contended that the said suit was decreed and he has filed an Execution Petition for recovery of the decree amount. The defendant filed an appeal in A.S.No.9 of 2012 against the judgment and decree made in the said suit and the same was dismissed.

6. Further, the plaintiff contended that the proceedings are pending for the past 23 years and hence, he is not able to enjoy the fruits of the decree. The learned Sub Judge, Pudukkottai is full in supportive of the defendant openly and adjourning the case



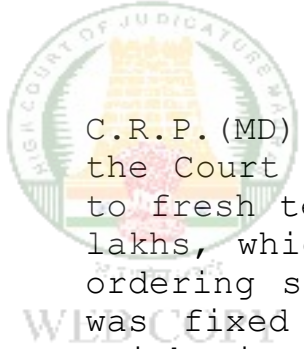
for a longer period. After considering the arguments and evidence, which was placed before this Court, this Court allowed the said Tr.C.M.P., and transferred the E.P.No.5 of 2005 in O.S.No.168 of 1989 from the file of the Sub Court, Pudukkottai, to the file of the Principal Sub Court, Trichirappalli and the learned Principal Sub Judge, Trichirappalli was directed to dispose of the said E.P., as expeditiously as possible. So, the direction was given for speedy disposal accordingly.

7.Now, the grievance of the petitioner herein/plaintiff is against the order dated 22.03.2018 made in the said E.P. The specific grievance of the plaintiff is that the learned I Additional Subordinate Judge, Tiruchirappalli had not obeyed the order passed by this Court in C.R.P.(MD) NO.606 of 2016. Further, the plaintiff contended that E.P.No.5 of 2012 was filed before the learned Subordinate Judge, Pudukkottai and the Court in Pudukkottai was dragging the case unnecessarily without ordering for sale proclamation of the schedule property. Hence, Tr.C.M.P.No.77 of 2014 was filed by the plaintiff and the same has been allowed and a direction was given to the learned Subordinate Judge, Pudukkottai, to dispose of the case at the earliest.

8.The further grievance of the plaintiff is that the learned I Additional Subordinate Judge, Trichy, has fixed a prize of the schedule property for a sum of Rs.12 lakhs first and then it was reduced to Rs.10 lakhs in E.P.No.218 of 2014 dated 10.02.2016 and the learned I Additional Subordinate Judge, Trichy, declared the date of sale proclamation on 09.09.2015, but the sale did not take place as the Nazar Office stated as no batta was paid by the plaintiff and the same has been proved in the Court below as false statement.

9.Further, the plaintiff contended that even in the second time, when the learned I Additional Subordinate Judge, Trichy, ordered for fresh sale deed, the sale proclamation was not conducted on 16.12.2015 on account of return of batta by the Keeranur Sub Court since there was no sufficient time for tom tom. Hence, the learned Subordinate Judge, Trichy, third time ordered for sale proclamation on 23.03.2016 and the plaintiff has also paid batta on 15.02.2016 for both lot Nos.1 and 2 based 19 cents and Pudukkottai property respectively, whereas, on that date, the learned I Additional Subordinate Judge, Trichy, had ordered sale proclamation for only lot No.1 and on 17.02.2016 stating that the 2nd lot cannot be made proclamation being it is in Pudukkottai Jurisdiction.

10.Further, the plaintiff contended that the Court below had deliberately avoided the sale proclamation, which is taking place for the 3rd time and dragged the execution proceedings by mere adjournment only without abiding the order passed by this Court in



C.R.P.(MD) No.606 of 2016. The plaintiff further contended that the Court below again without any cause on 22.03.2018 had ordered to fresh test batta for the lot Nos.1 & 2 raising the value for 12 lakhs, which is against the order of this Court and unjust and in ordering so, for fresh test batta for the value of lot Nos.1 & 2 was fixed for Rs.10,00,000/- by the learned Subordinate Judge, Trichy in E.A.No.7 of 2016.

11.Heard the learned counsel on either side and perused the records carefully.

12.The grievance of the petitioner herein/plaintiff is that in spite of the direction given in the said C.R.P., for early disposal, the Executing Court had not obeyed the same and made so much of delay by adjourning the case by fixing the sale proclamation for nearly more than 3 times. The plaintiff has aggrieved by the proceedings of the Court below in adjourning the case in spite of the direction given in the said C.R.P., for early disposal.

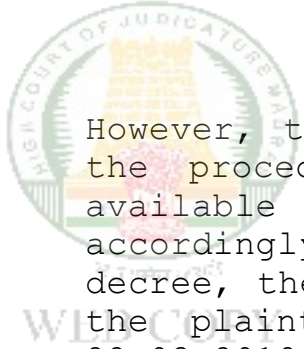
13.On perusal of the records, it is observed that the sale proclamation was ordered by the Executing Court on 09.09.2015 and 16.12.2015 and the plaintiff has paid batta on 15.02.2016 for both lots. Now, the grievance of the plaintiff is that the Court below has ordered the sale proclamation for lot No.1 only on 17.02.2016 by stating that the 2nd lot cannot be made proclamation being it is in Pudukkottai Jurisdiction. Further, it is seen that aggrieved by the order dated 17.02.2016, the plaintiff has not filed the exact order passed on 17.02.2016. On the other hand, the defendant has brought to the notice of the provisions of under Order XXI Rule 64 CPC, which is extracted hereunder:

64.Power to order property attached to be sold and proceeds to be paid to person entitled.

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

14.Hence, the Executing Court has ordered the sale proclamation only for lot No.1 on 17.02.2016 and the proclamation was not made for the second lot by stating that it is in Pudukkottai Jurisdiction. The plaintiff has argued that because of the delay caused by the Executing Court, the respondent is highly making construction in both the items.

15.Accordingly, the Executing Court brought lot No.1 for sale and for the lot No.2, the sale proclamation was not made.



However, the Executing Court has also proceeded by agreeing with the procedures that if the value of lot No.1 is very much available to set aside the decree, then the Court will proceed accordingly and if lot No.1 is not sufficient to set aside the decree, then only, the Court will be proceeded with lot No.2. So, the plaintiff cannot have any grievance on the order dated 22.03.2018, which is being followed by observing all the procedures laid down in C.R.P.(MD) No. 587 of 2013. Hence, the grievance of the plaintiff is not genuine.

16.However, the plaintiff has also aggrieved over the value fixed by the Court below. On enquiry, it is observed that the plaintiff has not filed any document to show the value of the property. The plaintiff has right to furnish the relevant documents as per the assessment regarding the value of the property, but he has not furnished the same. Hence, the value of property attached by the Court below Rs.12,00,000/- for two lots on 15.07.2015 as per the value reduced dated 29.04.2015. It is for the plaintiff and the defendant to furnish all the relevant documents according to their assessment regarding the value of the property and hence, the plaintiff cannot have any grievance over the said procedure and the order passed by the Executing Court dated 22.03.2018 since the Court below is abiding the procedures and there is no delay observed in the order dated 22.03.2018.

17.Considering the facts and circumstances of the case and in view of the said findings, this Court finds that there is no merit in this Civil Revision Petition and the docket order dated 22.03.2018 made in E.P.No.218 of 2014 in O.S.No.168 of 1989 on the file of the learned I Additional Sub Judge, Trichy does not require any interference of this Court. However, considering the request made by the plaintiff, the learned Subordinate Judge, Trichy, is directed to dispose of the case in E.P.No.218 of 2014 preferably within a period of six months from the date of receipt of a copy of this order.

18.This Civil Revision Petition is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

1.The I Additional Subordinate Judge,
Trichy.

2.The Subordinate Judge,
Pudukkottai.

3.The Subordinate Judge,
Trichy.

+1 CC to M/s.R.KRSNA MURTHI, Advocate (SR-63767[F] dated
29/04/2019)

+1 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-64149[F] dated
30/04/2019)

mm

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29.04.2019

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