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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1781 of 2019

and

CMP(MD)No.9207 of 2019

Mariappan ... Petitioner/Petitioner/Appellant

versus

Kasthuri ... Respondent/Respondent/Respondent

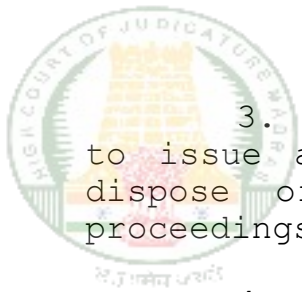
Civil Revision Petition filed under Article 227 of the Constitution of India, seeking a direction to the learned Sub Judge, Thiruchendur, to dispose of I.A.No.81 of 2018 in A.S.No.77 of 2018 within a time to be stipulated by this Court.

For Petitioner : Mr.P.M.Vishnuvarthanan

ORDER

The revision petitioner herein is the defendant in O.S.No.207 of 2016. The respondent herein filed a suit in O.S.No.207 of 2016 before the District Munsif Court, Srivaikundam, seeking for recovery of possession of suit schedule property from the defendant/revision petitioner. The said suit was decreed as against the revision petitioner on 02.08.2018. Aggrieved against the same, the revision petitioner filed A.S.No.77 of 2018 before the Sub Court, Tiruchendur. The respondent herein also filed E.P.No.31 of 2018 in order to execute the said decree. Therefore, the revision petitioner filed an interlocutory application in I.A.No.81 of 2018 in A.S.No.77 of 2018 before the Sub Court, Tiruchendur, seeking to stay the execution proceedings. Since the said application is pending for more than one year, the present Civil Revision Petition has been filed for speedy disposal of the said application.

2. The learned counsel appearing for the revision petitioner submitted that when the statutory appeal is pending before the appellate Court, execution proceedings should be stayed. But, the stay application in I.A.No.81 of 2018 in A.S.No.77 of 2018 is pending for more than one year, without staying the execution proceedings. Hence, the Civil Revision Petition has been filed, seeking a direction to the learned Sub Judge, Thiruchendur, to dispose of I.A.No.81 of 2018 in A.S.No.77 of 2018, within a time frame to be stipulated by this Court.



3. Now, the issue to be decided is whether it is necessary to issue a direction to the learned Sub Judge, Thiruchendur, to dispose of I.A.No.81 of 2018 seeking to stay the execution proceedings till the disposal of A.S.No.77 of 2018.

4. In order to decide the said issue, this Court has to see the provisions relating to stay of execution proceedings envisaged in the Civil Procedure Code. Order XLI, Rule 5 C.P.C. empowers the appellate Court to stay execution of decree during the pendency of the appeal on sufficient cause. Further, in terms of Sub-rule (1) of Rule 5 of Order XLI of C.P.C., an appeal shall not operate as a bar for stay of the proceedings. It is for the Appellate Court which may, for sufficient cause, order stay of execution of such decree.

5. In order to understand the said provision, it is necessary to extract the provisions of Order XLI Rule 5 of C.P.C. and the same is extracted hereunder:

"5. Stay by Appellate Court. - (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree."

6. Further, this Court, in the case of **K.Sankaranarayana Pillayan vs. R.Chellappa and A.S.Mahendrakumar**, has also granted conditional relief, the relevant portion of which is extracted hereunder:

"6. The Rent Controller Appellate Authority, Tirunelveli, is directed to dispose of the application in I.A.No.85 of 2013 within a period of two weeks from the date of receipt of a copy of this order, in case, the appellate Judge is condoning the delay and numbering the appeal, execution should be stayed till the disposal of appeal."

7. In terms of Sub-rule (1) of Rule 5 of Order XLI of C.P.C and following the ratio laid down by this Court in the above Judgment, this Court, in exercise of its power, direct the learned Sub Judge, Thiruchendur, to dispose of I.A.No.81 of 2018 in A.S.No.77 of 2018, within a period of three months from the date of receipt of a copy of this order and till such time orders are passed in the said I.A., the execution proceedings shall not be proceeded with.



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8. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Sub Judge,
Thiruchendur.

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-91436[F] dated 04/10/2019)

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