

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.955 of 2020

and C.M.P.No.5183 of 2020

I.Amali

...

Petitioner

versus

P.Sagaya Rakini

...

Respondent

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 21.01.2020 passed in E.P.No.358 of 2018 in O.S.No.2207 of 2013 on the file of the X City Civil Court, Chennai.

For Petitioner : Mr.T.Jayaramaraj

ORDER

This civil revision petition has been filed by the petitioner seeking to set aside the order dated 21.01.2020 passed in E.P.No.358 of 2018 in O.S.No.2207 of 2013 on the file of the X City Civil Court, Chennai.

2. The respondent/plaintiff has filed the suit in O.S.No.2207 of 2013 before the XII City Civil Court, Chennai, for mandatory injunction to remove her Balcony measuring 2' x 20' constructed on the ground floor and permanent injunction against the petitioner/defendant herein. The said suit was decreed on 06.08.2016. Challenging the aforesaid decree, the petitioner has preferred an appeal in A.S.SR.No.65011 of 2018 before learned Principal Judge, City Civil Court, Chennai, and along with appeal, the petitioner has also filed CMP.No.1360 of 2018 to condone the delay of 776 days in filing the appeal in A.S.(SR)No.65011 of 2018, in the aforesaid condone delay application, on contest by both the parties, was dismissed by the Appellate Court on 18.02.2019. Challenging the said dismissal order, the Civil Revision Petition has been filed before this Court. No interim order is granted by this Court at the time of admission. The present revision petition arises from the order passed in Execution Petition in E.P.No.358 of 2018 in O.S.No.2207 of 2013 to execute the decree passed by the Court below in O.S.No.2207 of 2013. The Court below has considered all the grounds raised by the petitioner in the counter affidavit filed in the aforesaid Execution

Petition. It is also recorded by the Court below that the revision petitioner has filed an application, challenging the aforesaid decree and the same was dismissed. The petitioner has also filed an application in CMP.No.1360 of 2018 in AS.(SR)No.65011 of 2018, to condone the delay of 776 days and the said application was dismissed by the appellate court on 18.02.2019, the application filed by the petitioner under Section 47 of Civil Procedure Code, in E.A.No.1 of 2019 and the same was dismissed by the Court below on 30.07.2019, which has become final, as of now, no appeal has been preferred.

3. The trial Court has considered the Execution Petition filed in E.P.No.358 of 2018 in O.S.No.2207 of 2013 before the learned X Assistant Judge, City Civil Court, Chennai filed by the respondent herein and the same was ordered for removal of the balcony described in the “B” schedule which is constructed by encroaching into the common passage described as “C” schedule property as per clause (1) of the decree at the expense of the judgment debtor”. Challenging the aforesaid order of the Executing Court, the petitioner/JD has filed the present Civil Revision Petition. According to the petitioner, challenging the dismissal

order passed in CMP.No.1360 of 2019 in AS(SR)No.65011 of 2018, the petitioner/JD has also been preferred CRP.No.1780 of 2019 before this Court and the same is pending. According to the petitioner, the Execution Petition has not been taken up due to the pendency of the said CRP. Therefore, the said order passed by the Executing court is erroneous and the same is liable to be set aside.

4. By considering the materials available in the typed set of papers, it discloses that the aforesaid suit in O.S.No.2207 of 2013 filed by the respondent/plaintiff for mandatory injunction and permanent injunction against the revision petitioner and the same was decreed on 06.08.2016. The petitioner has preferred an appeal against the judgment and decree in the suit before the appellate court. In the aforesaid appeal, the petitioner has also filed an delay application in AS.(SR).No.65011 of 2018. The aforesaid fact was disclosed in the counter affidavit, but the petitioner has not raised objection and further she sought time for filing additional affidavit, but no such additional affidavit has been filed. Again, the petitioner/Judgment Debtor has filed an application in E.A.No.1 of 2019 under Section 47 of CPC, which was dismissed by the Court below on

30.07.2019 and she has also challenged the aforesaid dismissal order passed in the aforesaid EA. The Judgment Debtor claimed that she preferred an appeal in AS.(SR).No.65011 of 2018.

5. It is stated that in the counter affidavit that the said appeal in AS.(SR).No.65011 of 2018 was filed within a delay of 776 days and the petition to condone delay was filed in CMP.No.1360 of 2018 and the said application was dismissed on 18.02.2019. According to the petitioner, challenging the same, CRP is pending before this Court. At the time of admission of the CRP, no interim order was granted in the aforesaid Civil Revision Petition. In the meantime, the order has been passed by the executing court in E.P.No.358 of 2018 on 21.01.2020.

6. This Court is of the considered view, that there is no error illegal in the order passed by the Executing Court in E.P.No.358 of 2018 under Order 21 Rule 32 of CPC, by executing the decree passed in the aforesaid suit in O.S.No.2207 of 2013, dated 06.08.2016. Hence, there is no merit to entertain the present civil revision petition and consequently, the contentions of the revision petitioner are liable to be rejected.

7. In view of the aforesaid facts and circumstances of the case, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.03.2020

Speaking order / Non-speaking order

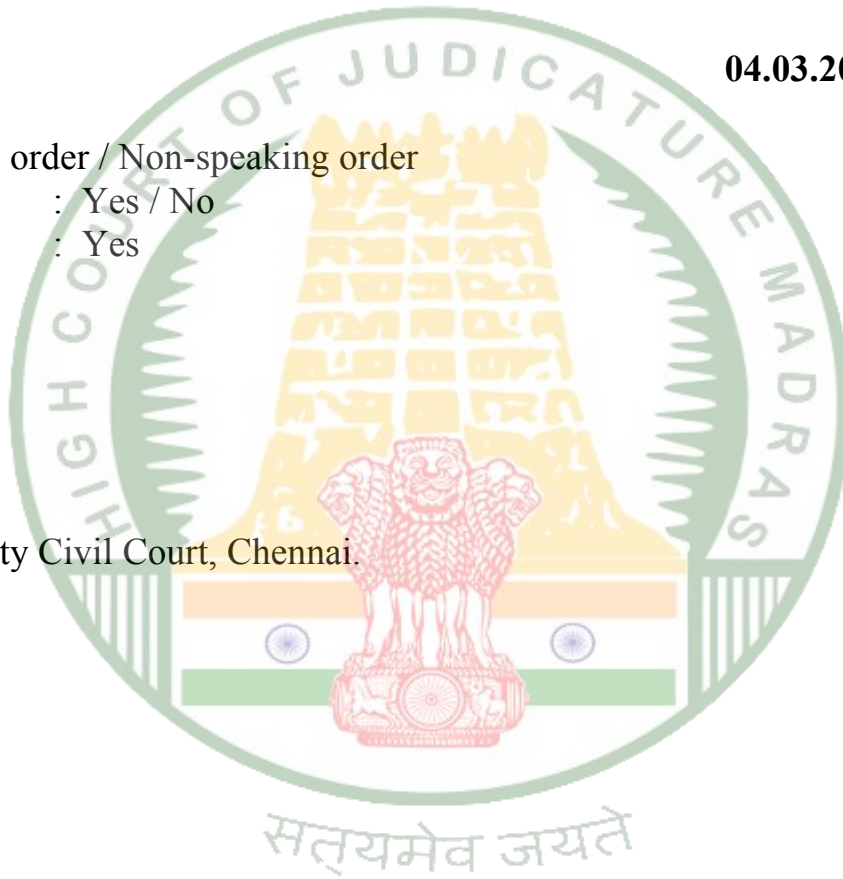
Index : Yes / No

Internet : Yes

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To

The X City Civil Court, Chennai.

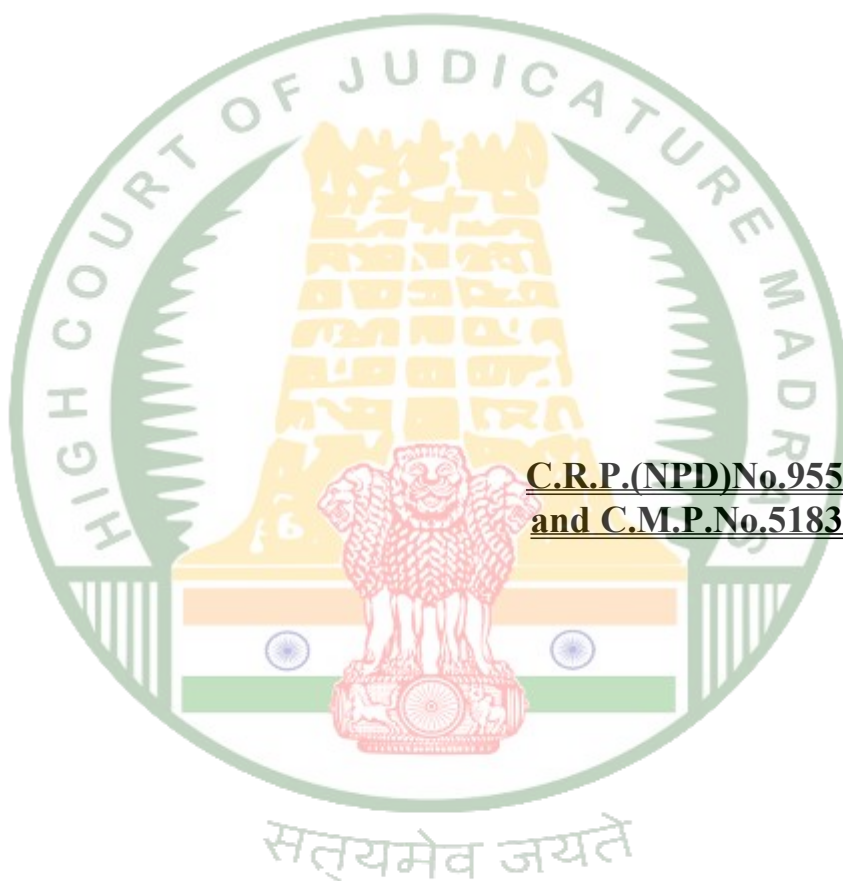


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D.KRISHNAKUMAR, J.

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