

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Ninth day of June Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE M.SUNDAR

CMP No.7185 of 2020

SA NO.8 of 2020

G.DURAISINGH

[PETITIONER]

Vs

1 THE CHAIRMAN
(THE DISTRICT COLLECTOR),
THE COMMITTEE ADMINISTRATION
OF JAWANS BHAVAN/
JAWANS MARKET COMMITTEE,
OFFICERS LINE,
VELLORE-1, VELLORE DISTRICT.

[RESPONDENTS]

2 THE ASSISTANT DIRECTOR,
EX-SERVICEMEN'S WELFARE BOARD,
JAWANS BHAVAN
OFFICERS LINE,
VELLORE-1, VELLORE DISTRICT.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order extending the time so fixed in the said direction order passed by this Hon'ble court in the judgement and decree passed in S.A.NO.8 of 2020 dated 9.1.2020 and subsequently extended by another 8 weeks from 30.03.2020 by an order dated 26.03.2020 made in CMP NO.6889 of 2020 in S.A.NO.8 of 2020 by another 8 weeks from 25.05.2020 and pass such further or other orders(CMP.7185/2020) in SA.8/2020.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.G.JAYACHANDRAN, Advocate for the petitioner the court made the following order:-

Instant 'Civil Miscellaneous Petition' ('CMP' for brevity) has been taken out by the appellant in the main second appeal, i.e., S.A.No.8 of 2020 which came to be disposed of by a Hon'ble Single Judge of this Court on 09.01.2020.

2 Today in the web hearing on a video conferencing platform, Mr.G.Jayachandran, learned counsel for petitioner in instant CMP is before me.

3 Learned counsel submits that the petitioner herein was plaintiff in O.S.No.65 of 2013 on the file of Principal District Munsif Court, Vellore and the suit was filed inter-alia with a prayer to not to dispossess de hors due process of law qua suit property. Considering the narrow scope of instant CMP, it may not be necessary to dilate further on factual aspects of the matter. Suffice to say that O.S.No.65 of 2013 came to be dismissed after full contest by trial court on 28.08.2017. Unsuccessful plaintiff carried it in an appeal by way of regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) by way of A.S.No.49 of 2017 on the file of Principal Sub Judge Court, Vellore. The first appellate court dismissed the first appeal after full contest on 22.08.2019. Against these two concurrent judgements / decrees, petitioner came to this court by way of aforementioned second appeal, i.e., S.A.No.8 of 2020 and the same came to be disposed of by a Hon'ble Single Judge of this Court on 09.01.2020 as mentioned supra. Learned counsel submits that vide this order, petitioner herein has been directed to hand over possession of suit property to the respondent by 30.03.2020.

4 It is also submitted that on the verge of expiry of time frame on 30.03.2020, petitioner took out an earlier CMP being C.M.P.No.6889 of 2020 and the same came to be disposed of by order dated 26.03.2020 by another Hon'ble Single Judge. Vide this order, time frame for handing over possession of suit property was extended by eight weeks from 30.03.2020 and that extended eight weeks period expired on 25.05.2020. Therefore, petitioner had the advantage of benevolence and munificence of this court qua this order dated 26.03.2020 made in C.M.P.No.6889 of 2020.

5 Now, instant CMP has been filed with a prayer for further extension of time by another eight weeks. In other words, this is a second CMP seeking extension of time for handing over possession of suit property.

6 The sole ground on which instant CMP is predicated is that the petitioner intends to prefer a Special Leave Petition in Hon'ble Supreme Court of India against 09.01.2020 judgment and decree of this court in S.A.No.8 of 2020 and there is delay in taking steps in this direction owing to intervening pandemic (Corona outbreak) and consequent lock down which can be collectively referred to as 'COVID 19 situation' for clarity. This is articulated in a part of paragraph 6 and paragraph 7 of the affidavit filed in support of instant CMP. Relevant portion of paragraph 6 and entire paragraph 7 of the affidavit filed in support of instant CMP read as follows:

'6.I submit that in view of the above and as I am filing a special leave petition before the Hon'ble Supreme Court of India against the judgment and decree passed by this Hon'ble Court in S.A.No.8 of 2020 dated 9.1.2020.....

7.I submit that on account of Covid-19 pandemic and subsequent national lack-down I am unable to file a special leave petition before the Hon'ble Supreme Court of India against the judgment and decree passed by this Hon'ble Court in S.A.No.8 of 2020 dated 9.1.2020. The interest of justice and balance of convenience require that the time so fixed in the said direction order passed by this Hon'ble Court in the judgment and decree passed in S.A.No.8 of 2020 dated 9.1.2020 and subsequently extended by another 8 weeks after 30.03.2020 by an order dated 26.03.2020 made in C.M.P.No.6889 of 2020 in S.A.No.8 of 2020 may be extended by another 8 weeks after 25.05.2020.'

Learned counsel submitted that petitioner and counsel are unable to travel to Delhi for filing SLP owing to Covid 19 situation.

7 In the web hearing today, it came to light that certified copies of judgment and decree dated 09.01.2020 in S.A.No.8 of 2020 were duly furnished to the petitioner on 06.02.2020 itself. In other words, certified copies of judgment and decree were in the hands of petitioner even before Covid 19 situation and lock down unfurled. Notwithstanding this, petitioner has already been granted eight weeks extension of time which has already been alluded to supra. There is no whisper in the affidavit about any efforts taken by the petitioner to file SLP through e-filing even after eight weeks extension given by this Court vide this 26.03.2020 order.

8 However, what is of greater relevance / significance is, Hon'ble Supreme Court is functioning upto now without summer vacation break. To be noted, petitioner has been furnished with judgment and decree copies in S.A.No.8 of 2020 on 06.02.2020 (before Covid-19 situation). Hon'ble Supreme Court was holding regular physical court hearings for a month thereafter, i.e., upto 06.03.2020 (till Holi holidays break). Post Holi holidays after limited functioning for a short while started holding virtual court hearings with e-filing facility and the same is underway for sometime now. Hon'ble Supreme Court has also passed a judicial order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 In Re : Cognizance for Extension of Limitation. This order passed by a Three Member Hon'ble Bench of Supreme Court presided over by Hon'ble Chief Justice of India makes it clear that to obviate difficulties and to ensure lawyer / litigants do not have to come physically to file such proceedings in respective Courts / Tribunals, the period of limitation has been extended and this includes proceedings in Supreme Court. Relevant paragraph of this order of Hon'ble Supreme Court reads as follows:

'To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.'

सत्यमेव जयते

(Underlining and double underlining made by this Court to supply emphasis and highlight)

9 Besides this, Hon'ble Supreme Court has also put in place e-Filing User Manual and has made detailed arrangements for e-filing. Cases filed in Hon'ble Supreme Court via e-filing route are being taken up. Therefore, the lone plea of the petitioner predicated on difficulties in approaching Hon'ble Supreme Court owing to Covid 19 situation falls flat and cannot be countenanced.

10 It is also made clear that the view taken in this order is owing to the facts and circumstances of this case, wherein the petitioner is in possession of suit property on the teeth of orders of this Court and one time enlargement by eight weeks coupled with the fact that according to the jurisdictional Executive Magistrate / jurisdictional Tahsildar the suit property is in a dilapidated condition and a threat to public safety owing to possibility of crumbling.

11 Yesterday learned counsel for petitioner has sent by way of email a notice sent by the jurisdictional Tahsildar, Vellore / jurisdictional Executive Magistrate. This has been served on noticee on 02.06.2020 and contents bring to light that suit property (according to notice) is in a condition which is dangerous to public, besides being unsafe due to possibility of crumbling. Relevant portion reads 'அந்த கட்டிடம் பழமையான கட்டிடம் எனவும், பொதுமக்கள் பயன்பாட்டிற்கு பயன்படுத்த இயலாத பாதுகாப்பற்ற நிலையில் உள்ளது என பொதுக்கணித் துறையினரால் கட்டிட உறுதிச் சான்று வழங்கப்பட்டுள்ளதால் தாங்கள் வியாபாரம் செய்யும் முன்னாள் படைவீரர் நல கட்டிடம் பொதுமக்களுக்கு அபாயகரமானதாகவும், பாதுகாப்பற்று இடிந்து விழும் நிலையில் உள்ளதால் அகற்றப்பட வேண்டும் என்பதாலும்' This means that there is a larger public interest aspect also in this matter.

12 Owing to all that have been set out supra, this court is not inclined to accede to the request in the instant CMP and this court is of the view that instant CMP deserves to be dismissed.

13 Though obvious, it is made clear that this order will not come in the way of the petitioner approaching Hon'ble Supreme Court, if so advised and if the petitioner chooses to do so. Therefore, instant CMP is dismissed. There shall be no order as to costs.

सत्यमेव जयते -sd/-

09/06/2020

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

WEB COPY

TO

1 THE PRINCIPAL SUBORDINATE JUDGE,
VELLORE ,VELLORE DISTRICT

2 THE PRINCIPAL DISTRICT MUNSIF,
VELLORE

3 THE SUPERINTENDENT OF POLICE,
VELLORE .

C.C. to MR.G.JAYACHANDRAN, Advocate on payment of necessary charges

Order

in

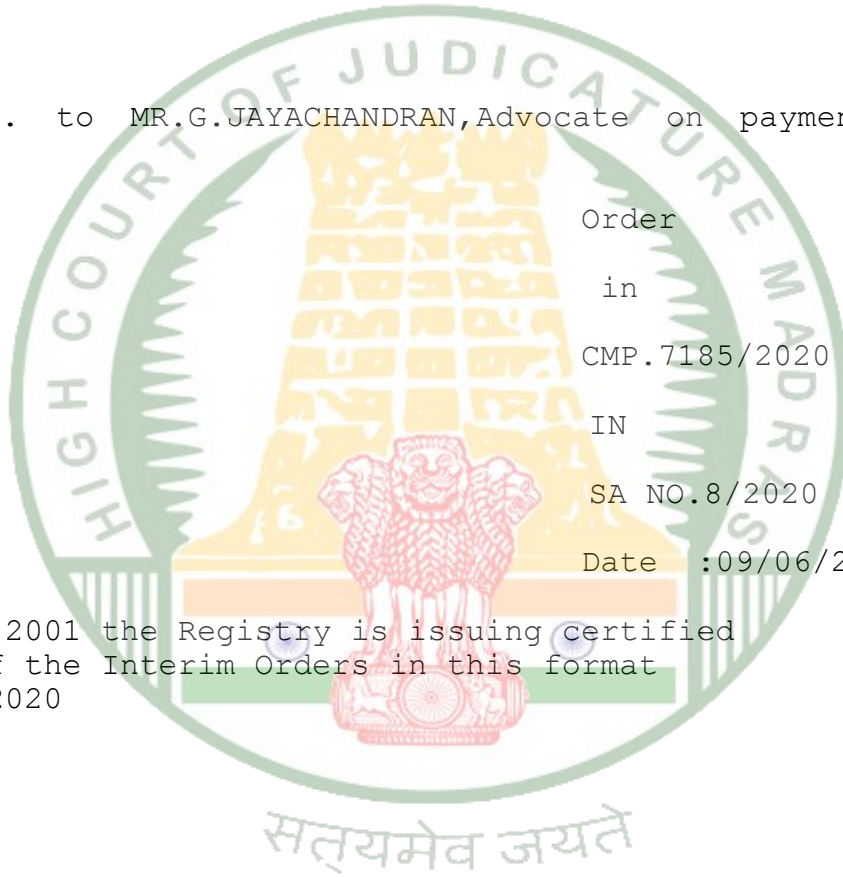
CMP.7185/2020

IN

SA NO.8/2020

Date :09/06/2020

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
MJ 12/06/2020



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