

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.286 of 2018 and
CMP No.1568 of 2018

K.M.Elumalai

... Petitioner

Vs

Madhavaperumal Thirukoil,
Represented by its Executive Officer
Having its office at Temple premises
Mylapore, Chennai 600 004.

... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, 1906, to set aside the order dated 14.10.2017 in E.P No.3157 of 2015 in O.S No 3379 of 2007 by the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : No appearance

For Respondent : Mr.A.K.Sri Ram, for
M/s.A.S.Kailasam and Associates

ORDER

Despite the matter being posted for more than two occasions, none appears for the petitioner.

2. The revision arises out of execution proceedings. The order challenged is one made in the execution petition filed by the respondent temple seeking execution of a decree made in O.S.No.3379 of 2007 on 28.04.2010. Admittedly, there was no appeal against the Judgment and decree in O.S.No.3379 of 2007. In the execution proceedings, the Judgment Debtor filed an application under Section 47 of Code of Civil Procedure, claiming that there was a compromise pending suit and the respondent, decree holder had agreed to withdraw the suit on payment of arrears of rent. It is also seen that the petitioner, Judgment Debtor had filed a writ petition in WP No.4801 of 2017 seeking a mandamus directing the Commissioner HR&CE who was cited as 1st respondent to consider his representation dated 07.10.2016.

3. Pursuant to the said direction, the Commissioner rejected the representation of the petitioner by a speaking order dated 12.06.2017. The application filed under Section 47 of Code of Civil Procedure was also dismissed by the Executing Court.

4. The only defence that was projected in the Execution petition is that even during the pendency of the suit, the Judgment Debtor has paid all arrears of rent and has been continuing to pay the rent and therefore the Decree has become in-executable. The arrears of rent was paid during the year 2009 during the pendency of the suit. Even thereafter the suit was proceeded with and it was decreed on merits on 28.04.2010. Therefore, the payment of arrears of rent during the pendency of the suit cannot stand in the way of execution of the decree, which was granted after the said payments were made. More over, the property involved belongs to a temple and the temple cannot enter into a compromise in a proceeding without the sanction of the Commissioner of the Hindu Religious Charitable and Endowments Department. It is also seen that the Commissioner, Hindu Religious Charitable and Endowment Department has rejected the proposed

compromise. Therefore, I do not see any irregularity or illegality in the order of the trial Court directing delivery . Therefore, the Civil Revision petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2020

vum

Index: Yes/No

Speaking order / Non speaking order

To

The IX Assistant Judge, City Civil Court, Chennai.



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R.SUBRAMANIAN, J.

vum



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