

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP.(NPD) No.578 of 2018
and CMP.No.3110 of 2018

V.Sekar

... Petitioners/Tenant

Vs.

Mohammed Hidaythullah

...Respondent/Landlord

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decreetal order made in E.A.No.298 of 2017 in RCOP.No.1 of 2013 on the file of the District Munsif Court, Sirkali, dated 12.01.2018.

For Petitioner : Mr.S.Gowsik Sundar

For Respondent : Ms.H.Kavitha
for Mr.S.Sounthar

ORDER

The petitioner who is the defendant had suffered exparte eviction order in RCOP.No.1 of 2013. The said eviction order is put to execution in E.P.No.36 of 2017. Claiming that an application to set aside the exparte eviction order is pending before the Learned Rent Controller, the petitioner has sought for stay of the proceedings before the Executing Court.

2. The learned District Munsif before whom the execution was launched, held that the petitioner has not made out sufficient cause to stay the execution. He also noted that the petitioner has filed an application to condone the delay in seeking to set aside the exparte eviction order. Due to his non-appearance, that application was dismissed for default, and only an application to restore the application that was dismissed for default is pending in E.A.No.38/2017. Therefore in the absence of an application to have an exparte order set aside, the learned District Munsif, refused to exercise his discretionary

power under Order XXI Rule 26, to stay the execution. Aggrieved, the petitioner has come up with this revision.

3. I have heard Mr.S.Gowsik Sundar, learned counsel appearing for the petitioner and Ms.H.Kavitha, learned counsel appearing for the respondent.

4. Mr.S.Gowsik Sundar, learned counsel appearing for the petitioner would vehemently contend that the Executing Court had power to stay the proceedings when the application for condonation of delay was pending.

5. Contending contra, Ms.H.Kavitha, the learned counsel appearing for the respondent would submit that Order XXI Rule 26 of the Code of Civil Procedure does not enable the Court in which the execution proceedings are pending to grant an order of stay of execution. According to her, Order XXI Rule 26 of CPC., could be invoked only where the decree has been sent for execution to some other Court, and that Court can stay the execution to enable the judgment debtor to apply to the Court which has passed the decree or to the Appellate Court. Therefore, according to the learned counsel for the respondent, there is no provision either under Tamil Nadu Buildings (Lease and Rent Control) Act or under C.P.C., enabling the executing Court to grant stay of execution.

6. I am in agreement with the learned counsel appearing for the respondent. Order XXI Rule 26 is the only an enabling provision which enables the Court to which the decree is sent for execution to grant stay till such time the Court which has passed the decree or the Appellate Court that has passed the orders for execution of the decree is moved for stay of execution. Here, the execution is pending before the same Court which has passed the decree. Therefore, that Court which has passed the decree can not exercise the power to grant stay of execution. Hence, this Civil Revision Petition fails and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1.The District Munsif
Sirkali.

2.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.Sounthar, Advocate in SR.26400

CRP. (NPD) No.578 of 2018

NMI (CO)
RV(16/09/2020)



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