

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

REVIEW APPLICATION NO.269 OF 2018

R.Muthaiyan

... Petitioner

Vs.

T.S.Narasimha Raju

... Respondent

PRAYER: Review Application filed under Order XLVII Rule 1 read with Section 114 of Civil Procedure Code against the order dated 28.04.2018 made in CRP (NPD) No.3395 of 2016.

For Petitioner : Mr.C.P.Sivamohan
For Respondent : Mr.N.Sankaravadivel

ORDER

This Review Application has been filed against the order passed by this Court in CRP (NPD) No.3395 of 2016 dated 28.04.2018.

2. This Court, in the above order, has found that the petitioner alleging serious ailment of renal failure must have admitted in a Hospital and he should have produced the medical records to that effect. Having failed to produce the medical records, it was held that he has not proved sufficient reasons for the delay. After receiving that order, the petitioner produced medical reports and sought for review of the order.

3. However, the learned counsel for the respondent would contend that much water has been flown under the bridge and the petitioner having failed to diligently pursue the suit as well as the execution petition, cannot maintain the review application on the ground that he inadvertently omitted to file the documents before the Trial Court. He would further submit that he was served with notice in execution petition as early as on 05.03.2015. Prior to that, the petitioner was issued with a notice to execute the sale deed, pursuant to the decree, but he failed to take any action. Since he failed to execute the sale deed, execution petition was filed in 2014 and notice in the execution petition was served on 05.03.2015. On 06.03.2015, the petitioner was called absent and he was set *exparte* and the petitioner was directed to file the draft sale deed. At that stage, he filed a petition under

Order 21 Rule 105 read with Section 151 CPC and the same was returned as defective. But it was not represented by the petitioner, in spite of adjournments granted on four occasions. Thereafter, the sale deed was filed only on 24.04.2015 and the sale deed was executed on 29.04.2015. The petitioner came out with a Memo dated 02.07.2015 before the Trial Court that he has filed the petition to set aside the *exparte* decree on 20.03.2015. By that time, execution of sale deed itself was completed and the execution petition was terminated.

4. The learned counsel for the respondent now submits that he, in furtherance of the sale deed, conveyed the property to other person and therefore, the Review Application need not be entertained.

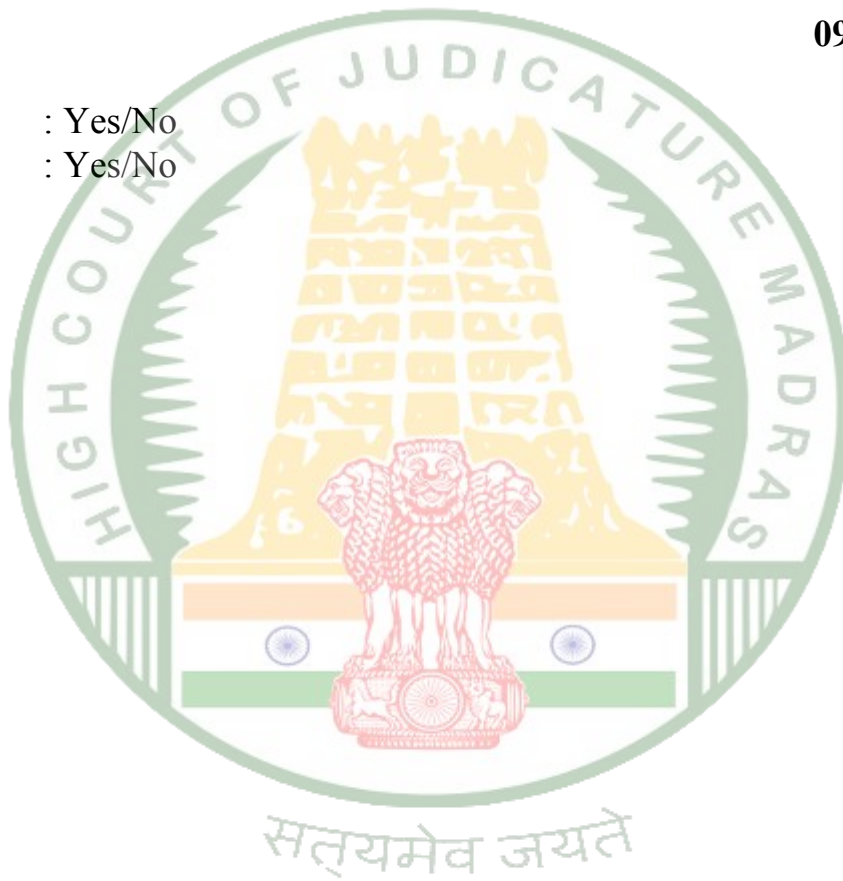
5. Considering the totality of the circumstances, it is seen that the petitioner has not only availed the opportunities to defend the suit, but also failed to appear in the execution proceedings. Even though it is seen that a petition under Order 21 Rule 105 CPC was filed, that was also not prosecuted diligently. When there were opportunities to contest the execution petition, he has not chosen to do so. Therefore, after dismissal of the Civil Revision Petition, filling up the *lacuna* under the pretext of review

application is not sustainable. The petitioner has not set out any grounds for not producing the medical records before the Trial Court. But the reason stated is that it was inadvertently omitted to be filed by the counsel. Such reason and production of medical records at this stage will not fall within the purview of Order 47 Rule 1 CPC. The petitioner was in possession of the documents, but failed to act diligently. Even before the revisional Court, he had failed to produce the documents and that in spite of his diligence, it could not be produced before the Trial Court. Both before the Trial Court as well as before the execution Court, the petitioner has failed to exercise his due diligence and failed to show sufficient reason to review the order. Even assuming review application is allowed, it cannot set back the clock and relegate him to old position, as decree has already been executed and the decree holder has further transferred the title in favour of a third party. The conveyance creating third party interest over the property cannot be held as unlawful. Hence, the matter has become infructuous. Therefore, the Review Application is not sustainable.

6. In fine, the Review Application is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
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