



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP NPD (MD)No.2199 of 2017

and

CMP (MD)No.10788 of 2017

M.Anbarasu

.. Petitioner/Respondents/
Respondents

Vs.

Amutha

.. Respondent/Petitioner/
Plaintiff

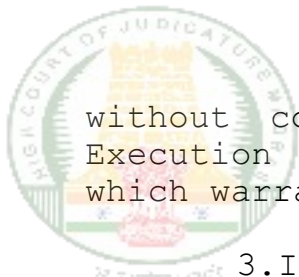
Civil Revision Petition filed under Section 115 CPC to set aside the fair and decretal order in E.A.No.389 of 2017 in E.P.No.21 of 2017 in O.S.No.26 of 2007 passed by the Principal Sub Court, Tenkasi, Tirunelveli District dated 23.08.2017.

For Petitioner : Mr.PR.Boomerajan

ORDER

The respondent herein is the plaintiff and the petitioner is the defendant in O.S.No.26 of 2007. After obtaining decree, the respondent/plaintiff filed an Execution Petition in E.P.No.21 of 2017 to execute the decree granted by the trial Court. During pendency of the Execution Petition, the petitioner herein/defendant filed an Execution Application to stay the Execution proceedings, which was dismissed by the Execution Court. Challenging the order passed by the Execution Court in E.A.No.389 of 2017, the petitioner is before this Court by filing this Civil Revision Petition.

2.The learned counsel for the petitioner would submit that challenging the judgment and decree passed by the trial Court, the petitioner herein filed an Appeal in A.S.No.47 of 2017 and the same is pending. During pendency of the appeal, if the decree is executed, it will cause prejudice to the petitioner and the appeal itself will be frustrated. Therefore, he filed an application to stay the proceedings in the Execution Petition. The Execution Court



without considering the pendency of the appeal, dismissed the Execution Application and proceeded with the Execution Petition, which warrants interference of this Court.

3.It is not in dispute that the respondent filed a suit against the petitioner herein and got a decree in her favour. Though the petitioner has stated that he filed an appeal challenging the judgment and decree passed by the trial Court in O.S.No.26 of 2007, admittedly, the appeal is pending from 2017 and no stay has been obtained. It is time and again held by the Hon'ble Supreme Court and this Court that mere filing of the appeal is not a ground to stay the proceedings in the Execution Petition, unless the appellate Court stayed the judgment and decree passed by the trial Court. Under these circumstances, this Court does not find any perversity in the order passed by the Execution Court in E.A.No.389 of 2017. Therefore, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, CMP(MD)No.10788 of 2017 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

mj

To

The Principal Sub Court, Tenkasi, Tirunelveli District

CRP NPD(MD)No.2199 of 2017

Dated : 10.03.2020

SS/15.05.2020/2P-2C