



CRP (NPD) No.1716 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.1716 of 2021
and CMP No.13359 of 2021

R.Kamalanathan

... Petitioner

Vs

1. K.Murugesan

2. M.Nirmala

... Respondents

Prayer: The Civil Revision petition filed under Article 115 of Code of Civil Procedure, against the fair and decreetal order, dated 24.03.2021 passed in E.A.No.213 of 2018 in E.P.No.46 of 2017, on the file of the learned Principal District Judge, Tiruppur.

For Petitioner : Mr.S.Subbiah, Senior Counsel for
Mr.Elizabeth Ravi

For Respondent : Mr.S.Kalyanaraman

ORDER

This Revision is directed against an order passed by the learned Principal District Judge, Tiruppur, dated 24.03.2021, dismissing the application for stay of Execution of the Decree in O.S.No.381 of 2005 dated 26.06.2006 pending disposal of the suit in O.S.No.18 of 2015 filed by the



CRP (NPD) No.1716 of 2021

petitioner herein seeking to set aside the said exparte decree on the ground it is fraudulent and on other grounds.

2. The facts leading to the revision are as follows:

The respondents herein filed a suit in O.S.No.381 of 2005 against the petitioner seeking specific performance of an agreement of sale dated 20.08.2003. The said suit came to be decreed exparte on 26.06.2006. The attempts made by the petitioner to have the exparte decree set aside failed. After disposal of the CRP which was dismissed by the Court on 27.07.2012, the petitioner has chosen to file a suit in O.S.No.18 of 2015 seeking declaration that the said exparte decree is null and void, for setting aside the same and consequential injunctive reliefs are also sought for. After filing of the said suit, the petitioner has approached the Executing Court, namely the Principal District Court, Tiruppur on whose file E.P.No.46 of 2017, the Execution petition seeking to execute the Decree in O.S.No.381 of 2005 was pending, seeking stay of the proceedings purportedly under Order XXI Rule 29 of C.P.C.,

3. The Executing Court namely the Principal District Judge,



CRP (NPD) No.1716 of 2021

Tiruppur has dismissed the stay petition on the ground that unless both the suit and the Execution petition are pending on the same Court, Order XXI Rule 29 of C.P.C., would not stand attract.

4. Mr.S.Subbiah, learned Senior Counsel appearing for the petitioner would vehemently contend that the learned Principal District Judge erred in concluding that Order XXI Rule 29 of C.P.C., contemplate pendency of both the proceedings before the same Court. He would further submit that the pendency of the suit in the additional District Court may not alter the position, since the additional District Court is only an extension of the Principal District Court and only the matters assigned by the Principal District Court to the Additional District Court, are taken up by the Additional District Court.

5. No Doubt, the submission of the learned counsel appears to be correct. Though I agree with the submission of the learned Senior counsel that the reasoning given by the trial Court for dismissing the application is incorrect, I am unable to interfere with the same under Article 227 of the



CRP (NPD) No.1716 of 2021

Constitution of India in as much as the provisions of Order XXI Rule 29 of

WEB COPY C.P.C., do not contemplate stay of Execution proceedings by the Executing

Court itself. Order XXI Rule 29 reads as follows:

*“Stay of Execution pending suit between decree-holder and judgment debtor:- Where **a suit is pending in any Court** against the holder of a decree of such Court (or of a decree which is being executed by such Court) on the part of the person against whom the decree was passed, **the Court may**, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”*

6. The reading of the above provision would clearly demonstrate that the power to grant stay is vested in the Court in which the suit challenging the decree is pending and not the executing Court. The Power of stay under Order XXI Rule 29 of C.P.C., is vested in the trial Court which has to consider the merits of the claim and decide as to whether the Execution Proceedings should be stayed pending disposal of the suit. The Executing Court is not empowered to grant stay of Execution except in cases falling under Order XXI Rule 26 of C.P.C., Hence, the very



CRP (NPD) No.1716 of 2021

application in E.A.No.213 of 2018 was not maintainable. Therefore, the

Civil Revision Petition is dismissed, confirming the order of the Trial Court.

However, liberty is reserved to the petitioner to approach the trial Court invoking Order XXI Rule 29 of C.P.C., to seek stay. If such application is filed, the Court before which the suit is pending namely the II Additional District Judge, Tiruppur shall dispose of the same on merits without being influenced by any of the observations made in the order of the learned Principal District Judge, Tiruppur which is impugned in this revision or in this order. No costs. Consequently, connected miscellaneous petition is closed.

12.11.2021

vum

Index: Yes/No

Speaking order / Non speaking order



WEB COPY



CRP (NPD) No.1716 of 2021

R.SUBRAMANIAN, J.

vum

To:
The Principal District Judge, Tiruppur.

CRP (NPD) No.1716 of 2021
and CMP No.13359 of 2021

12.11.2021