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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.03.2021

DELIEVRED ON : 22.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.212 of 2021

and

C.M.P. (MD) .No.1304 of 2021

P.F.Sumaiyya Banu

.. Petitioner /
Respondent / Defendant /
Judgment Debtor

Vs.

Syed Mohammed Maheen

.. Respondent /
Petitioner / Plaintiff /
Decree Holder

PRAYER: Civil Revision Petition filed under section 115 of Civil Procedure Code, against the order, dated 23.01.2021, passed in E.P.No.1 of 2021 in O.S.No.139 of 2016 by the learned Principal District Munsif, Padmanabhapuram.

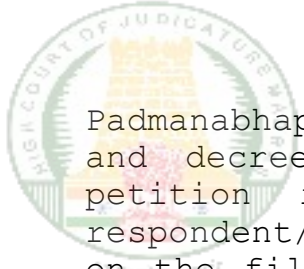
For Petitioner : Mr.V.Meenakshisundaram
For respondent : Mr.M.Sengu Vijay

ORDER

This civil revision petition has been filed by the revision petitioner / defendant, challenging the order 23.01.2021 passed in E.P.No.1 of 2021 in O.S.No.139 of 2016 by the learned Principal District Munsif Court, Padmanabhapuram.

2. The brief facts leading to the filing of this revision petition are as follows:

The petitioner and the respondent are wife and husband. The respondent divorced the petitioner by pronouncing Triple Talaq. Stating that the petitioner/wife herein trespassed into the suit property and she is on wrongful possession, the respondent/husband as plaintiff has filed the suit in O.S.No.139 of 2016 for recovery of possession and mesne profits. After trial, the trial Court, by judgment dated 11.11.2020, decreed the suit in part and thereby, directed the petitioner/wife to deliver the suit property in favour of the plaintiff within two months. Aggrieved by the said judgment and decree, on 15.12.2020 the petitioner/wife filed an appeal suit in A.S.No.25 of 2020 on the file of the Subordinate Court,



Padmanabhapuram and seeking to stay the operation of the judgment and decree in O.S.No.139 of 2016, the petitioner/wife filed a petition in I.A.No.1 of 2020. While so, on 18.01.2021 the respondent/husband filed an execution petition in E.P.No.1 of 2021 on the file of the Execution Court. On 23.01.2021, the Execution Court has passed an order that "in view of order 21 Rule 22 C.P.C. notice is dispensed with. Delivery by 23/02/2021. Batta in 3 days." Aggrieved by the order of delivery without notice, the petitioner/wife has come up with this Civil Revision Petition.

3. The learned counsel for the petitioner submitted that the Court below ought not to have ordered delivery without issuing any notice to the petitioner, especially when the appeal suit was pending.

4. The learned counsel for the respondent submitted that the Court below had acted within the ambit of law in ordering delivery of possession without notice by invoking Order 21 Rule 22 C.P.C. Therefore, the order passed by the Court below need not be interfered with.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. As per order 21 Rule 22 C.P.C., notice could be dispensed with, if execution petition is filed within two years from the date of decree. In this case, as the execution petition filed within two years from the date of the decree, on 23.01.2021 the Execution Court by invoking Order 21 Rule 22 C.P.C., dispensed with the notice to the petitioner/defendant and ordered delivery by 23.02.2021. Hence, this Court does not find any valid reason to interfere with the order passed by the Executing Court.

7. Though it is stated by the petitioner that she filed appeal suit as early as on 15.12.2020 and the respondent purposefully evaded notice in the appeal and thereafter, paper publication has been ordered by the first appellate Court, the fact remains that notice in the appeal has not been served before the order of delivery and the paper publication was ordered by the first appellate Court only on 23.01.2021 ie., the date on which the delivery was ordered and as such, paper publication was made on 31.01.2021. More over, a perusal of record shows that when the matter came up for admission on 12.02.2021, this Court granted an order of interim stay for a period of eight weeks and then, when the matter came up for hearing on 12.03.2021, it is brought to the notice of this Court by the learned counsel for the respondent that now the petitioner obtained an interim order in the appeal suit. Therefore, there is no impediment for the petitioner to proceed with the appeal suit. In view of the above, this Court is not inclined to interfere with the impugned order.



8. In the result, this Civil Revision Petition is closed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif,
Padmanabhapuram.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-19876[F] dated
22/06/2021)

+1 CC to M/s.M.SENGU VIJAY, Advocate (SR-20103[F] dated
24/06/2021)

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