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C.R.P(NPD).No.276 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.276 of 2022

&

C.M.P.No.1334 of 2022

R.Saroja

...Petitioner

Vs

T.A.Suriyakumar

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against fair and decreetal order dated 18.11.2021 passed in R.E.A.No.3 of 2021 in R.E.P.No.59 of 2019 in O.S.No.56 of 2011, on the file of the Principal District Munsif, Salem.

For Petitioner : Mrs.Elizabeth Ravi.



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ORDER

The 5th defendant / Judgement Debtor is the revision petitioner before this Court challenging the dismissal of her application in R.E.A.No.3 of 2021 in R.E.P.No.59 of 2019 in O.S.No.56 of 2011 on the file of the Principal District Munsif, Salem. The impugned petition had been filed by the revision petitioner to stay all further proceedings in execution petition. The facts in brief which are necessary for disposing of the present Civil Revision Petition are as follows.

2. The respondent herein had filed a suit O.S.No.56 of 2011 on the file of the II Additional District Munsif, Salem against the father of the revision petitioner herein and three others for a permanent injunction restraining the 1st defendant and his men from in any way restraining the plaintiff from parking his vehicles and using the

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staircase to reach his house situate in the A-Schedule property, to grant a mandatory injunction directing the 1st defendant to remove additional unauthorised construction put up by him which had been described in B and C schedule to the plaint.

3. Pending the suit, the 1st defendant who had filed a written statement passed away. Thereafter, his daughter, the revision petitioner herein was impleaded as the 5th defendant in the suit. After trial, the II Additional District Munsif, Salem by his Judgement and Decree dated 22.06.2018 was pleased to decree the suit as prayed for.

4. Thereafter, the plaintiff / respondent herein put the decree to execution in R.E.P.No.59 of 2019 seeking notice to the 5th defendant to remove the superstructure put up in B and C schedule property, failing which direct the Court Amin to remove the same. The execution petition was filed on 16.12.2018. Nearly three years

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thereafter, the revision petitioner herein filed First Appeal challenging the Judgement and Decree in O.S.No.56 of 2011 on the file of the Subordinate Judge, Salem. The appeal had been filed with a delay of nearly 1195 days, for which an application in I.A.No.1 of 2021 was filed.

5. Meanwhile, the notice in the execution petition has been served on the revision petitioner on 05.08.2019 and the 5th defendant / revision petitioner had also filed her counter on 19.11.2019 contending that she had received the certified copy of the Judgement on 24.10.2019 and she had taken steps to file a condone delay petition.

6. Since the First Appeal had been filed albeit with a huge delay, the revision petitioner herein filed an impugned application seeking stay of all further proceedings in R.E.P.No.59 of 2019 on the 4/12



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file of the Principal District Munsif, Salem till the disposal of her First Appeal pending on the file of the Subordinate Judge, Salem. In the application filed in support of the said petition, the revision petitioner had contended that she was kept in the dark about the decree by her earlier counsel and that only after notice in the execution proceedings she had come to know about the Judgement and Decree in O.S.No.56 of 2011.

7. Her earlier counsel had undertaken to file an appeal as soon as he received the Judgement and Decree. Believing his words the 5th defendant / revision petitioner had not further got in touch with the counsel and it was only when the Court Amin had come to her house on September 2021, she realised that an appeal had not been filed. Thereafter, the 5th defendant / revision petitioner had collected papers back from the earlier counsel and handed the brief to her present counsel who had informed her that no appeal has been filed, as a

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result of which she had filed an application for condoning the delay of 1195 days. Since she has good case to urge in the appeal and finality had not reached in the case, the decree in the above suit need not be executed and therefore she sought for a stay.

8. The Court after hearing both the counsels had dismissed the application taking note of the conduct of the petitioner. Challenging the same, the revision petitioner is before this Court.

9. The only point urged by the learned counsel for the 5th defendant / revision petitioner is that during the cross examination, the plaintiff / respondent as P.W.1 had conceded that he had permitted the 1st defendant to put up car shed and a small structure in the backyard on condition that the plaintiff would have 50% interest in these constructions i.e., in the car shed as well as in the floor over the construction to be put up in the backyard.



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10. The learned counsel for the revision petitioner would further contend that after admitting that the construction has been put up only under the tacit consent of the plaintiff / respondent, the plaintiff cannot sustain the case put forward by him and therefore it is her contention that the revision petitioner has a very good case on merits. Therefore, she sought for a stay in the execution proceedings.

11. The matter had come up for admission before this Court. Though the arguments of the learned counsel for revision petitioner appears attractive, however, this Court is compelled to hold otherwise since the conduct of the revision petitioner during and after the suit clearly indicates absolute nonchalance to the legal proceedings. The following dates would throw lights on the above.

* The suit had been decreed after contest on 22.06.2018. The



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5th defendant / revision petitioner had not taken any steps whatsoever to obtain the Judgement and Decree to file an appeal.

* On the contrary, the plaintiff / respondent had initiated execution proceedings in R.E.P.No.59 of 2019 on 27.06.2019.

* The Court had ordered notice to the revision petitioner herein and on 05.08.2019 the notice had been served on the revision petitioner.

* The 5th defendant / revision petitioner had also filed her counter on 19.11.2019, in which she had conceded that she had received a decree and Judgement in the suit on 24.10.2019.

12. Further, the First Appeal had been filed by the revision petitioner only on September 2021, i.e., nearly two years after

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receiving summons from the execution Court.

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13. In the affidavit filed in support of the petition for stay, the revision petitioner has made out as if she was entitled to stay as a matter of right. In paragraph no.5 of the affidavit, the revision petitioner has stated as follows:

“I have got a good and fair opportunity to succeed in the above appeal. Till the disposal of the above appeal, there is no finality of the above case and the decree of the above suit need not to be executed till then as per law.”

14. A reading of the above statement would indicate that it is the revision petitioner's belief that once an appeal is filed the execution cannot be proceeded with. This unfortunately is not the



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law. Further, the revision petitioner has waited for nearly 2 years after the receipt of the notice in the execution petition to move the impugned application. The same has been rightly rejected by the Trial Court since the revision petitioner has not taken any steps to approach the Principal Subordinate Judge, Salem to take up the petition for condoning the delay at the earliest. The revision petitioner has not made out any case for interfering a well considered order of the Trial Court and therefore this Court does not find any reasons to set aside the impugned order.

15. In the result, the Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,
The Principal District Munsif, Salem.

P.T.ASHA, J.,

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