



C.R.P.(NPD)No.954 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.07.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P.(NPD)No.954 of 2019

and

C.M.P.No.6271 of 2019

S.Susheela

... Petitioner

Vs.

A.Joghee

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the adjudication (docket) order dated 28.02.2019 passed in E.P.No.300056/2011 om O.S.No.45 of 2005 on the file of the Hon'ble District Munsiff at Udhagamandalam and allow this Civil Revision Petition.

For Petitioner : Mr.A.M.Ayyadurai

For Respondent : Mr.N.Damodaran



C.R.P.(NPD)No.954 of 2019

WEB COPY

ORDER

This Civil Revision Petition has been filed to set aside the adjudication (docket) order dated 28.02.2019 passed in E.P.No.300056/2011 on O.S.No.45 of 2005 on the file of District Munsiff at Udhagamandalam.

2. Revision petitioner is the defendant/Judgment debtor in O.S.45 of 2005. Respondent herein is the plaintiff/decreed-holder.

In the said Original Suit, ex parte decree was passed on 12.01.2007 in favour of the plaintiff/decreed holder. To set aside the ex parte decree, petition in I.A.No.236 of 2012 has been filed to condone the delay of 1838 days in filing the set aside application.

3. The learned Judge, allowed the above said application on 02.08.2012, on condition that the defendant/revision petitioner pays a sum of Rs.500/- to the plaintiff. However, feeling aggrieved, the plaintiff approached this court and this court by order dated 20.02.2017, passed the following order:-



“18. In the result,

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(a) the civil revision petition is dismissed, by confirming the order passed in I.A.No.236 of 2012 in O.S.No.45 of 2005 dated 02.08.2012, on the file of the District Munsif Court, Udthagamandalam, on condition that the respondent should pay a sum of Rs.50,000/- as cost to the petitioner/plaintiff instead of Rs.500/- as ordered by the trial court within a period of 4 weeks from the date of receipt of the order;

(b) on production of the payment receipt, the trial court namely the District Munsif court, Udthagamandalam, is hereby directed to number the set aside application and pass orders within a period of one month, by giving notice to both parties;

© on passing the order in the set aside petition, the trial court is directed to dispose of the suit within a period of two months, on day to day basis, without giving any adjournment to either parties, since the suit is of the year 2005. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.”



C.R.P.(NPD)No.954 of 2019

4. But the revision petitioner/judgment debtor did not comply with the above order passed by this court and the decree passed in the suit has become final. Since the directions passed by this court has not been complied with by the defendant/judgment debtor, the plaintiff-decree holder has no other option except to proceed with the Execution Petition. In the said Execution Petition, the Executing Court, passed the following order:-

“ Possession could not be delivered as want of VAO, Surveyor, Police aid and demolition order. Petition under Section 151 of CPC filed. No sitting. District Munsif on Other Duty reposted to 05.03.2019. “

5. Heard and perused the entire typed set of papers.

6. The suit has been filed by the respondent herein as plaintiff and suit was decreed exparte on 12.01.2007. Thereafter, the defendant filed petition to set aside the exparte order wherein conditional order



C.R.P.(NPD)No.954 of 2019

has been passed by the trial court. The decree holder, being aggrieved by the order passed in petition to set aside the exparte order, filed CRP before this court and this court, by order dated 20.02.2017, dismissed the said CRP and given directions enhancing the cost of Rs.500/- to Rs.50,000/-. But that cost has not been paid by the revision petitioner/judgment debtor. The revision petitioner/judgment debtor, without even complying with the direction and not paying the cost as per the order of this court, is successfully dragging on the matter from 12.01.2007 and now, filed this revision as against the adjudication order passed by the Executing Court dated 28.02.2019 in E.P.No.300056/2011 stating that the Executing Court, without full-fledged trial and without hearing the counsel, is taking up the matter. It has been stated by the judgment debtor that plaintiff is taking steps to dispossess her with rowdy elements.

7. It is very unfortunate that the matter has been prolonging from the year 2007 and when the exparte decree has been passed in favour of the plaintiff as early as on 12.01.2007 the defendant/revision



C.R.P.(NPD)No.954 of 2019

petitioner, without complying with the directions of this court, is successfully dragging on the matter. The plaintiff cannot be deprived of the fruits of the decree. Therefore, the learned Judge, Executing Court, is directed to expedite the Execution Proceedings and execute the decree passed in O.S.No.45 of 2007 dated 12.01.2007, within three weeks from the date of receipt of a copy of this order.

8. The civil revision petition is dismissed with the above directions. No costs. Stay stands vacated.

20.07.2022

Index :Yes/No
Internet:Yes/No
Sts/nvsri

To

1. The District Munsif,
Udhagamandalam.
- 2.The Record Keeper, VR.Section, High Court, Madras



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C.R.P.(NPD)No.954 of 2019

J. NISHA BANU, J.
Sts/nvsri

C.R.P.No.954 of 2019

20.07.2022