



WEB COPY



CRP.NPD.Nos.1876 to 1879 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.Nos.1876 to 1879 of 2016

CRP.No.1876 of 2016

B.Umapathy

... Petitioner

Vs.

M/s.Sagar Construction
Rep. by its Proprietor,
Vidyasagar,
No.91-92, Jawaharlal Nehru Salai,
Ashok Nagar, Chennai 600 083
Respondent

...

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the decreetal order and order dated 28.08.2003 made in EA.No.2651 of 2003 in EP.No.2187 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai and to allow the civil revision petition.

For Petitioner : No appearance

For Respondent : Ms.Jyotsna Sivakumar
for Mr.Srinath Sridevan

CRP.No.1877 of 2016

B.Umapathy

... Petitioner

Vs.

M/s.Sagar Construction



CRP.NPD.Nos.1876 to 1879 of 2016

Rep. by its Proprietor,
Vidyasagar,
No.91-92, Jawaharlal Nehru Salai,
Ashok Nagar, Chennai 600 083
Respondent

...

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the decreetal order and order dated 28.08.2003 made in EA.No.2652 of 2003 in EP.No.2185 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai and to allow the civil revision petition.

For Petitioner : No appearance

For Respondent : Ms.Jyotsna Sivakumar
for Mr.Srinath Sridevan

CRP.No.1878 of 2016

B.Umapathy

... Petitioner

Vs.

M/s.Sagar Construction
Rep. by its Proprietor,
Vidyasagar,
No.91-92, Jawaharlal Nehru Salai,
Ashok Nagar, Chennai 600 083
Respondent

...

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the decreetal order and order dated 28.08.2003 made in EP.No.2185 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai and to allow the civil revision petition.

For Petitioner : No appearance

For Respondent : Ms.Jyotsna Sivakumar



CRP.NPD.Nos.1876 to 1879 of 2016

for Mr.Srinath Sridevan

WEB CRP.No.1879 of 2016

B.Umapathy

... Petitioner

Vs.

M/s.Sagar Construction
Rep. by its Proprietor,
Vidyasagar,
No.91-92, Jawaharlal Nehru Salai,
Ashok Nagar, Chennai 600 083
Respondent

...

PRAYER: Civil Revision petition is filed under Section 115 of CPC against the order dated 28.08.2003 passed in EP.No.2187 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai and to set aside the same.

For Petitioner : No appearance

For Respondent : Ms.Jyotsna Sivakumar
for Mr.Srinath Sridevan

COMMON ORDER

The civil revision petition in CRP.No.1876 of 2016 has been filed to set aside the decreetal order and order dated 28.08.2003 made in EA.No.2651 of 2003 in EP.No.2187 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai; the civil revision petition in CRP.No.1877 of 2016 has been filed to set aside the decreetal order and order dated 28.08.2003 made in EA.No.2652 of 2003 in EP.No.2185 of



CRP.NPD.Nos.1876 to 1879 of 2016

2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai; the civil revision petition in CRP.No.1878 of 2016 has been filed to set aside the decretal order and order dated 28.08.2003 made in EP.No.2185 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai; and the civil revision petition in CRP.No.1879 of 2016 has been filed to set aside the order dated 28.08.2003 passed in EP.No.2187 of 2002 in OS.No.5686 of 2000 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

2. Heard, the learned counsel appearing for the respondent.

3. It is submitted by the learned counsel for the respondent that this court already dismissed the civil revision petitions in CRP.(NPD) Nos.937 and 938 of 2006 on 01.09.2017, wherein the parties are the same and the same were arising out of the very present suit. The relevant portion of the above order is extracted hereunder:

“2. The petitioner is the plaintiff and respondent is the first defendant in O.S.No.5686 of 2000. The petitioner and respondent compromised the matter and compromise decree was passed on 19.09.2001 in O.S.No.5686 of 2000. As per the compromise decree, the petitioner has given up



WEB COPY

1090 sq.ft on condition that the respondent deliver 150 sq.ft land on south-east corner of the suit land and the respondent would construct and deliver the flat measuring 585 sq.ft in the second floor in Block No.B, Flat No.D. If the respondent fails to deliver the said flat within the time limit, the respondent has to pay a sum of Rs.3/- per sq.ft per month to the petitioner. As the respondent failed to deliver the flat within the time limit as agreed upon, the petitioner filed E.P.Nos.2185 & 2187 of 2002 for arrest and detain the respondent in civil prison and for attachment of immovable property. The respondent filed E.A.Nos.2652 and 2651 of 2003 under Section 47 of C.P.C., contending that the decree is not executable as the petitioner failed to register the compromise decree in respect of immovable property as per Section 17(2)(vi) of the Registration Act. The learned Judge considering the said provisions allowed E.A.Nos.2651 and 2652 of 2003 by holding that the decree is not executable for want of registration. Now the petitioner has filed E.P.Nos.337 and 339 of 2005 for arrest and detain the respondent in civil prison for non-payment of damages and for attachment of immovable property.

3. The respondent filed common counter affidavit and submitted that the present execution petitions are not maintainable, in view of the fact that the earlier



CRP.NPD.Nos.1876 to 1879 of 2016

E.P.Nos.2185 and 2187 of 2002 were dismissed for non-registration of compromise decree.

WEB COPY

4. The learned Judge considering the fact that the petitioner did not challenge the order passed in E.A.Nos.2651 and 2652 of 2003 in E.P.Nos.2187 and 2185 of 2002 dismissed the present execution petitions in E.P.Nos.337 and 339 of 2005 by holding that the decree is not executable and the order passed in E.A.Nos.2651 and 2652 of 2003 has become final.

5. Against the said order dated 19.08.2005 made in E.P.Nos.337 and 339 of 2005, the present two civil revision petitions are filed by the petitioner/tenant.

6. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

7. In view of the fact that by order dated 28.08.2003 made in E.A.No.2652 of 2003 in E.P.No.2185 of 2002, wherein it has been held that the compromise decree is not executable for want of registration and the said order has



WEB COPY

become final, there is no irregularity in the order passed by the learned Judge dated 19.08.2005 dismissing E.P.No.337 of 2005 filed by the petitioner for the very same relief.

8. As far as E.P.No.339 of 2005 is concerned, the contention of the learned counsel for the petitioner that earlier E.P.No.2187 of 2002 is with regard to attachment of immovable property and the present E.P.No.339 of 2005 is with regard to damages and not for immovable property and the said E.P. is maintainable, is without merits. The damages arises only when the respondent failed to deliver the flat within the time limit as agreed upon and recorded in the compromise decree. In view of this, the said E.P. is filed only on the ground of non delivery of flat and the compromise decree has to be registered as per Section 17(2)(vi) and 47 of the Registration Act.

9. The learned Judge considering all the above facts rightly dismissed both the E.P.Nos.337 and 339 of 2005. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 19.08.2005.

10. In the result, the two Civil Revision Petitions are dismissed. It is open to the petitioner to register the



CRP.NPD.Nos.1876 to 1879 of 2016

compromise decree and file execution petition, if he has any claim. No costs.”

WEB COPY

4. Therefore, in view of the order passed in CRP.NPD.Nos.937 & 938 of 2006 on 01.09.2017, all the present civil revision petitions are also dismissed. However, it is open to the petitioner to register the compromise decree and file execution petition, if he has any claim. No order as to costs.

05.12.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

lok



WEB COPY



CRP.NPD.Nos.1876 to 1879 of 2016



WEB COPY



CRP.NPD.Nos.1876 to 1879 of 2016

G.K.ILANTHIRAIYAN, J.

lok

To

The learned IX Assistant Judge,
City Civil Court, Chennai

CRP.NPD.Nos.1876 to 1879 of 2016



WEB COPY



CRP.NPD.Nos.1876 to 1879 of 2016

05.12.2022