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C.R.P. (NPD) No.1942 of 2022
and C.M.P. No.9851 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (NPD) No.1942 of 2022
and C.M.P. No.9851 of 2022

D.Sivakumar

...

Petitioner /
Judgment Debtor

versus

M.N.Sengoda Goundar (Died)
S.Karuppannan

...

Respondent /
Decree Holder

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 07.12.2021 passed in R.E.P.No.126 of 2017 in O.S.No.163 of 1998 on the file of the learned I Additional Subordinate Judge, Salem.

For Petitioner : Mr.L.Mouli

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned I Additional Subordinate Judge, Salem, dated 07.12.2021 made in R.E.P.No.126 of 2017 in O.S.No.163 of 1998.



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2. The revision petitioner is the judgment debtor in the decree passed against him in O.S.No.163 of 1998. The said suit was filed by the plaintiff for the relief of specific performance and the suit was decreed on 18.06.2004. Subsequent to that, the respondent / decree holder has filed the execution proceedings and the same was allowed. Aggrieved over that, the petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submitted that the petitioner has filed the petition to set aside the *ex parte* decree and that is yet to be disposed of and in the meanwhile, delivery was ordered and that would prejudice his interest.

4. It is pertinent to note that the suit is of the year 1998, in which, the plaintiff got a decree in the year 2004. The *ex parte* decree is not set aside, till now. The learned counsel for the petitioner submitted that, despite the petition filed in time, it was not traceable in the Court and that is why, the delay had occurred and the petition got numbered only in the year



2019. Had there been any mistake on the part of the Court, that should have been brought to the knowledge of the Court at the earliest point of time. The delayed proceedings taken by the revision petitioner is an attempt to cause further delay only. Hence, the reason stated by the learned counsel for the petitioner for not pursuing the appropriate proceedings in time, is not acceptable.

5. The plaintiff is waiting from the year 1998 to see the light of his suit and got a decree. He cannot be made to wait indefinitely for enjoying the fruits of the decree. At the time when the delivery order was passed in the execution proceedings, there was no stay pending. Hence, nothing will tie the Court from passing appropriate orders. The learned Executing Judge has rightly passed the order of “delivery”. Hence, I find no factual and legal infirmity in the order passed by the learned I Additional Subordinate Judge, Salem.

6. Accordingly, this Civil Revision Petition is dismissed and the order dated 07.12.2021 passed by the learned I Additional Subordinate Judge, Salem in R.E.P.No.126 of 2017 in O.S.No.163 of 1998 is hereby



confirmed. Consequently, connected Miscellaneous Petition is closed.

However, there is no order as to costs.

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Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

The I Additional Subordinate Judge,
Salem.



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R.N.MANJULA, J.

sri

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