



CRP(PD)(MD)No.1418 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1418 of 2022

and

CMP(MD)No.5891 of 2022

1. Sri Rama Metal Company
through its Partner,
R.T.Vasudevan
S/o. R.R.Thulasiram,
6, Kamarajar Salai,
Madurai – 625 009.

2. R.T.Vasudevan

3. R.T.Venkatesh

... Revision Petitioners

versus

K.N.Krishnasamy Pagavathar,
Private Dharma Trust,
through its Present Managing Trustee,
K.R.Krishnasamy @ Mothi,
S/o.K.J.Ramamoorthy
64, Mahal Vadampokki Street,
Madurai.

... Respondent



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Civil Revision Petition filed under Section 115 of C.P.C. against the order dated 10.06.2022 passed in E.P.No.564 of 2018 in O.S.No. 108 of 2008 by the learned Principal Subordinate Judge, Madurai.

For Revision Petitioners: Mr.K.V.Ravichandran

For Respondent : Mr.N.S.Karthikeyan
for M/s.G.Rampandian

ORDER

This Civil Revision Petition is filed against the order dated 10.06.2022 passed in E.P.No.564 of 2018 in O.S.No.108 of 2008 by the learned Principal Subordinate Judge, Madurai.

2. The revision petitioners are tenants under the respondent herein. The respondent herein filed a suit in O.S.No.108 of 2008 before the learned Subordinate Judge, Madurai, for eviction. The trial Court, by Judgment and Decree dated 30.04.2011, decreed the suit in favour of the plaintiff/respondent herein. Challenging the same, the tenants/revision petitioners herein preferred an appeal suit in A.S.No.



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33 of 2011 before the Principal District Judge, Madurai, which was also dismissed by Judgment and Decree dated 07.09.2017. Aggrieved over the same, the tenants/revision petitioners also preferred a second appeal before this Court, which is in SR stage. Based on the decree passed by the trial Court, the landlord/respondent herein filed an Execution Petition in E.P.No.564 of 2018 in O.S.No.108 of 2008, wherein, delivery order was passed by the Executing Court on 10.06.2022. Aggrieved over the same, the tenants/revision petitioners are before this Court.

3. The learned counsel appearing for the revision petitioners submits that the revision petitioners are carrying on a business under the name and style of “Sri Rama Metal Company”. Therefore, they must be provided sufficient time to vacate the premises. He further submits that aggrieved against the Judgment and decree passed by the First Appellate Court dated 07.09.2017 in A.S.No.33 of 2011, second appeal has also been preferred, however, the same is yet to be



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numbered. The counsel, who preferred the second appeal, died and the revision petitioners are also taking necessary steps by engaging a new counsel to prosecute the second appeal. In the meantime, delivery order was passed. He further submits that if the building is vacated, the revision petitioners cannot have a case in the second appeal. In view of the proposed second appeal, this Court may interfere with the order of the Executing Court and give sufficient time to prosecute the second appeal.

4. The learned counsel for the respondent strongly opposed for entertaining the Civil Revision Petition stating that the revision petitioners are dragging on the matter in one way or other and the proposed second appeal was filed two years back, however, the same is not even numbered. The Executing Court has also granted sufficient time and thereafter only, passed the delivery order. The revision petitioners have successfully evaded by locking the doors and therefore, the delivery order could not be effected. In order to break



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open and vacate the building, the respondent has filed an application for police protection before the Executing Court and the same is listed today for hearing.

5. This Court considered the rival submissions made and also perused the order passed by the Court below.

6. The revision petitioners suffered a decree in the suit as well as in the appeal suit. The revision petitioners claim that they have filed the second appeal and the same is in SR stage and yet to be numbered

7. The suit was decreed in favour of the respondent on 30.04.2011 and the appeal suit preferred by the revision petitioners was also dismissed on 07.09.2017. The execution petition was filed by the respondent in the year 2018 and the delivery order was passed only on 10.06.2022. Even, in the past three years, the revision petitioners have not taken any step to number the second appeal and prosecute the same.



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Therefore, this Court does not find any fault with the delivery order passed by the Execution Court. In the absence of any order preventing the Executing Court to proceed with the delivery order, this Court is not inclined to interfere with the delivery order passed by the Execution Court.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.07.2022

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Index : Yes / No.

Internet: Yes / No.

To

1. The learned Principal Subordinate Judge,
Madurai.



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B.PUGALENDHI, J.

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