



CRP(PD)(MD)No.1349 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1349 of 2022

Hasarath Syed Sha Miyan Sahab
Saheb Kadhiri Thaikkal Wakf,
Rep. by its junior Trustee,
Syed Vajhan Nagi Sakkab,
residing at No.657, Thakkal lane,
Kondirajapalayam, East Main Street,
Thanjavur Town and Munsifi

... Revision Petitioner

versus

S.M.A.Farook (died)

1. F.Fathima Gani

2. S.M.A.Haseena Jhon

3. S.M.A.Naseera Banu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal Sub Court, Thanjavur District, to accept the Batta Memo which was filed for the purpose of taking physical possession of the suit property with the help of Police and VAO based



CRP(PD)(MD)No.1349 of 2022

on the order dated 22.12.2014 in E.P.No.29 of 2012 in W.O.P.No.11 of 1999.

For Revision Petitioner : Mr.A.Senthil Kumar

ORDER

This Civil Revision Petition is filed seeking a direction to the Principal Sub Court, Thanjavur District, to accept the Batta Memo, which was filed for the purpose of taking physical possession of the suit property with the help of Police and VAO, based on the order, dated 22.12.2014, in E.P.No.29 of 2012 in W.O.P.No.11 of 1999.

2. The learned counsel appearing for the revision petitioner submits that the revision petitioner filed a suit in O.S.No.74 of 1996 for eviction, which has been transferred to Wakf Tribunal and renumbered as W.O.P.No.11 of 1999. The Wakf Tribunal, by Judgment and Decree dated 15.10.2006, allowed the petition in favour of the revision petitioner. Based on the said decree, the revision petitioner filed an



CRP(PD)(MD)No.1349 of 2022

execution petition in E.P.No.29 of 2012 before the Executing Court.

The Executing Court, by order dated 22.12.2014, allowed the petition and ordered for delivery. The respondents herein filed an application in E.A.No.46 of 2021 to declare the decree passed in W.O.P.No.11 of 2019 as null and void, which was rejected by the Executing Court on 30.03.2022. When the revision petitioner filed a Memo of batta for delivery, the same was returned by the Executing Court on 12.04.2022 stating that the respondents herein have also filed an application in E.A.No.29 of 2022 and the same was pending. Since there was no order passed prohibiting the Executing Court to proceed with the delivery, the revision petitioner, on 20.04.2022, again represented the Memo of batta for delivery. However, the Executing Court, on 22.04.2022, returned the Memo of batta by stating that the respondents are intending to file a revision petition against the dismissal order dated 30.03.2022 passed in E.A.No.46 of 2021. The Civil Revision Petition filed by the respondents in CRP(MD)No.1237 of 2022 was also dismissed by this Court on 23.06.2022. In view of the dismissal order



CRP(PD)(MD)No.1349 of 2022

passed in CRP(MD)No.1237 of 2022, the prayer sought for in E.A.No. 29 of 2022 has become infructuous. The revision petitioner again represented the Memo of batta for delivery, on 27.04.2022 and the same was returned by the Executing Court stating that the respondents herein have also filed another application in E.A.No.52 of 2022 stating that they are intending to prefer a Special Leave Petition before the Hon'ble Supreme Court. Hence, the revision petitioner is before this Court.

3. This Court considered the submissions made by the learned counsel appearing for the revision petitioner and also perused the materials available on record.

4. Though the respondents herein filed an application in E.A.No. 46 of 2021 to declare the decree passed in W.O.P.No.11 of 1999, it was dismissed by the Executing Court, by order dated 30.03.2022. Thereafter, the respondents herein again filed E.A.No.29 of 2022



CRP(PD)(MD)No.1349 of 2022

praying to keep the delivery order in abeyance stating that they are intending to file a revision petition against the order dated 30.03.2022 passed in E.A.No.46 of 2021. The Civil Revision Petition filed by the respondents herein in CRP(MD)No.1237 of 2022 was also dismissed by this Court, by order dated 23.06.2022. Again, they filed another application in E.A.No.52 of 2022 seeking the same relief stating that they are intending to file a Special Leave Petition before the Hon'ble Supreme Court. Based on that, the Memo of batta for delivery filed by the revision petitioner was returned by the Executing Court.

5. As per Order XLI, Rule 5 of the Code of Civil Procedure, an appeal shall not operate as a stay of proceedings under a decree or order, nor shall execution of a decree, be stayed by reason only of an appeal having been preferred from the decree, but the appellate court may for sufficient cause order stay of execution of such a decree.



CRP(PD)(MD)No.1349 of 2022

6. The Hon'ble Supreme Court, in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., reported in (2005) 1 SCC 705, while dealing with the provisions of Order 41 Rule 5 C.P.C, observed as under:-

“Mere preferring of any appeal does not operate as stay of decree or order appealed against nor on the proceedings in the court below....

.... To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made.”

7. It is seen that as on date, no order is passed prohibiting the Executing Court to proceed with the order of delivery, this Court directs the Executing Court to entertain the memo of batta for delivery and proceed with the delivery in accordance with law.



CRP(PD)(MD)No.1349 of 2022

8. Accordingly, the Civil Revision Petition is disposed of. No costs.

13.07.2022

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Note: The Registry is directed to return the original
batta memo to the revision petitioner.

To

1. The Principal Sub Court,
Thanjavur District



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CRP(PD)(MD)No.1349 of 2022

B.PUGALENDHI, J.

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CRP(PD)(MD)No.1349 of 2022

13.07.2022