



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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C.R.P. (MD) .No.18 of 2017

and

CMP(MD) .No.69 of 2017

1.R.Kaliyaperumal

2.K.Balaraman

...Petitioners/Petitioners/
Respondents/Defendants

Vs.

C.Baskar

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Case is filed under Article 115 of Constitution of India as against the fair and decreetal order dated 17.10.2016 made in E.A.No.169 of 2016 in E.P.No.105 of 2011 in O.S.No.88 of 2009 on the file of the Principal District Munsif, Kumbakonam.

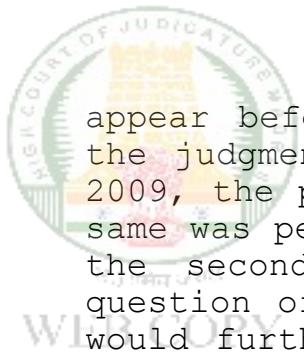
For Petitioners : Mr.P.Thiagarajan
For Respondent : Mr.M.R.S.Prabhu

O R D E R

The petitioners are the defendants in O.S.No.88 of 2009 on the file of the Principal District Munsif Court, Kumbakonam. The respondent is the plaintiff.

2.Since the respondent/plaintiff got a decree in the suit, he filed an Execution Petition in E.P.No.105 of 2011. In the said E.P, an exparte order was passed and an order of delivery was also ordered. Subsequently, the petitioners/defendants filed an application in E.A.No.169 of 2016 invoking Order 21 Rule 106 C.P.C to set aside the exparte order passed in E.P.No.105 of 2011. The said petition came to be dismissed by the Executing Court. Challenging the said order passed by the Executing Court in E.A.No.169 of 2016, dated 17.10.2016, the present revision has been filed.

3.The learned counsel for the petitioners would submit that on the date of passing an order of delivery in the execution petition, the first petitioner was hospitalized. Therefore, they could not



appear before the Court. He would further submit that challenging the judgment and decree passed by the trial Court in O.S.No.88 of 2009, the petitioners have filed an appeal before the Court and the same was pending. Subsequently, the first petitioner was died. Since the second petitioner is the son of the first petitioner, no question of abetment would arise in this case. The learned counsel would further submit that thereafter, the appeal was dismissed. As against the same, the petitioners have filed a second appeal before this Court and the same is pending. Though the petitioners have made an averment in the affidavit that the first petitioner was hospitalized and that is the reason, they could not present on the date and the appeal was also pending before the Appellate Court, the Executing Court failed to consider these facts and simply passed an exparte order of delivery which warrants interference of this Court.

4.The learned counsel for the respondent would submit that the appeal filed by the petitioners was dismissed. Subsequently, the petitioners filed the second appeal, but no stay was granted by the Appellate Court. Even in the first appeal also, on the date of passing an order of delivery in the Execution Petition, there was no stay. The petitioners have not produced any documentary evidence to say that on the date of passing of an exparte order, the first petitioner was hospitalized. Therefore, considering all these facts, the Execution Court rightly passed an order of delivery where there is no reason to interfere with the same.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.Admittedly, the respondent is the plaintiff and the petitioners are the defendants in O.S.No.88 of 2009. The trial Court passed a decree in favour of the plaintiff. Challenging the same, the petitioners herein have filed an appeal. During pendency of the appeal, there was no stay. The respondent/plaintiff filed the execution petition in E.P.No.105 of 2011. The respondents in the said E.P did not appear, therefore, the Executing Court passed an exparte order of delivery and subsequently, the petitioners/defendants filed an application in E.P.No.169 of 2016 to set aside the exparte order passed by the Executing Court in E.P.No.105 of 2011 stating that the first petitioner was hospitalized and the second petitioner who is the son of the first petitioner, taking care of him. Therefore, they could not proceed further and the appeal was pending. Mere pending an appeal, no bar to proceed with the execution petition unless and otherwise, the Appellate Court stayed the execution proceedings. Though the petitioners have made the averments in the petition in E.A.No.169 of 2016 that the first petitioner was hospitalized, absolutely no documentary evidence was produced before the Executing Court.

7.Therefore, the Executing Court has rightly dismissed the petition and this Court does not find any illegality or infirmity in the order of delivery passed by the Executing Court in E.A.No.169 of 2016. There



is no merit in this revision and it is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

msa

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal District Munsif
Kumbakonam

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-1622[F] dated
12/01/2022)

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MGJ(01.02.2022) 3P 5C