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4. This Court by taking into consideration the affidavits of undertaking filed by the respondent passed following order:-

“25. In the light of the above discussions, this Court after taking into consideration the undertaking affidavit filed by the revision petitioner that he would abide by the decree put into execution, his age and illness, this Court is inclined to modify the order impugned as stated infra.

26. The order of arrest passed by Court below shall be kept in abeyance by directing the petitioner/judgment debtor to pay compensatory cost of Rs.10,000/- to the respondent within a period of two weeks from today. The cost shall be deposited by petitioner to the credit of E.P.No.1191 of 2013, on the file of the IX Assistant City Civil Court, Chennai, within two weeks. On such deposit, the said sum shall be disbursed to the respondents/decreed holder and further proceedings in present E.P shall be terminated. In case, petitioner fails to deposit the amount within the time stipulated, the eclipse created by this order will get lifted and the executing Court is at liberty to proceed with arrest as per order impugned in this revision.



27. It is made clear in case petitioner commit violation of the decree under execution in future, it not only will amount to disobedience of the decree under execution, it will also amount to violation of undertaking affidavit filed by petitioner before this Court. In such an eventuality the respondents/decreed holder are at liberty to move either the executing Court or this Court in accordance with law.

28. The Civil Revision Petition is disposed of with the above modifications. Consequently, connected miscellaneous petition is closed. There shall be no further order as to costs. Registry is directed to preserve the undertaking affidavit dated 01.09.2022 filed by the petitioner”.

5. Since in the last paragraph of the order, the registry was directed to preserve the undertaking of affidavit dated 01.09.2022 alone, at the instance of the learned counsel for the petitioner, the matter was posted for being mentioned again on 05.06.2023. After hearing both the parties, this Court directed the registry to include the undertaking affidavit dated 02.12.2022 also in the last paragraph of the order.

6. Since there was an undertaking by the respondent to remove the



enclosures put up by him around the trees in the suit property, after recording the consensus reached between both the counsels to remove the enclosures put up by the respondent around the trees, an Advocate Commissioner was appointed for local inspection and file a report to the Court about actual removal of the enclosures as undertook by the respondent. The relevant portion of the order dated 05.06.2023 reads as follows:-

“4. In view of the undertaking made by the petitioner, it is necessary to include the undertaking affidavit of the petitioner dated 02.12.2022 also in Paragraph 28 of the order. Therefore, the Registry is directed to remove the following expression 'undertaking affidavit dated 01.09.2022' and substitute the same with following expression 'undertaking affidavits dated 01.09.2022 and 02.12.2022', in the last sentence of the order.

5. The learned counsel for the respondents further submits that a time limit may be fixed for removal of the enclosures put up by the petitioner around the trees in the suit properties. The learned Senior Counsel for the petitioner submits that his client is ready to remove the enclosures put up by him around the trees in the suit property in the



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presence of Advocate Commissioner to be appointed by this Court. The learned counsel for the respondents also agrees for the same.

6. In view of the consensus reached between the learned counsel for the petitioner and respondents, the petitioner is directed to remove the enclosures put up by him around the trees in the suit property as undertook by him in the affidavit dated 02.12.2022 on 19.06.2023 in the presence of the Advocate Commissioner.

7. Ms.R.Gandhimathi, Advocate, C/o. Madras High Court Advocate Association, (Cell No: 9940384161) is appointed as Advocate Commissioner, who shall visit the suit property on 19.06.2023 after issuing notice to both the parties. In her presence, the petitioner shall remove the enclosures around the trees in the suit property as undertook by him in his affidavit dated 02.12.2022. The Advocate Commissioner shall file her report before this Court on or before 23.06.2023 and the same shall be kept along with main bundle.

7. Accordingly, the Advocate Commissioner filed a report to the effect that enclosures around the trees in the suit property were removed by the respondent. Now, the petitioner has filed this application seeking a direction



to respondent to comply with the orders of this Court dated 13.04.2023 and 05.06.2023.

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8. A reading of the relevant portion of the order extracted above make it clear that the respondent undertook to remove the enclosures put up by him around the trees in the suit property and the same has been removed in the presence of the Advocate Commissioner. Therefore, the undertaking given by the respondent to this Court has been complied with by the respondent.

9. The learned counsel for the petitioner mainly submitted that the respondent failed to remove the gate, grill like structure made up of metal, decorative lights, name and number plates in the Eastern side compound wall.

10. A perusal of the affidavits of undertaking filed by the respondent dated 01.09.2022 and 02.12.2022 would make it clear that respondent undertook to remove the enclosures put up by him around the trees in the suit property. There is no mention about undertaking to remove the gate, metal bars, decorative lights and name board. Even in the order dated



05.06.2023, based on the consensus among the counsels, the respondent was directed to remove the enclosures put up by him around the trees in the suit property. In the order passed by this Court, there is no reference about gate, metal bar, decorative lights and name board. Therefore, the present petition seeking direction to comply with the order dated 13.04.2023 and 05.06.2023 requires no further orders as the respondent removed the enclosures around the trees as ordered.

11. In fact, the gate referred to by the petitioner in the Eastern compound wall is with regard to the Clause (2) of the decree passed in O.S.No.9974 of 1992 and the same is in the nature of mandatory injunction. The petitioner for the reasons best known to him failed to execute the mandatory injunction portion of the decree for the past 32 years. In fact, he filed Execution Petition for arrest of the respondent only for violation of decree for permanent injunction. Therefore, the petitioner cannot attempt to expand the scope of the present petition by seeking execution of mandatory injunction part of the decree which also appeared to be time barred.

12. The learned counsel for the petitioners contended that in his undertaking affidavit, the respondent had averred that he undertook to obey



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the judgment and decree in its letter and spirit in future and therefore, he is under obligation to remove the iron gate put up in the eastern compound wall. The undertaking affidavit is filed by the respondent in a revision arising out of execution application filed by the petitioners to enforce decree for permanent injunction. The undertaking affidavit filed by the respondent is only in respect of decree for injunction. The non-compliance of the mandatory injunction portion of the decree was not at all an issue before this Court in revision. Because the petitioners themselves only filed execution application for enforcement of decree for permanent injunction. The petitioner has not sought for execution of mandatory injunction portion of the decree. Further, even in the undertaking affidavit as mentioned above, the respondent only undertook to remove enclosures around trees in the suit property. With regard to mandatory injunction portion of the decree, no undertaking was given. The present prayer for removal of gate, metal bars, decorative lights and name board etc., in eastern side compound wall would amount to seeking execution of the decree for mandatory injunction which has not been put into execution for the past 32 years and consequently, time barred.

13. Therefore, I do not find any reason to entertain the application and



hence C.M.P.No.16926 of 2023 is dismissed as no further orders are necessary.

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14. As far as the prayer in C.M.P.No.16929 of 2023 seeking enhancement of cost ordered to be paid by the respondent is concerned, when the Civil Revision Petition was posted for being mentioned on 05.06.2023, the petitioner has not raised any request for enhancement of the cost. Now, after some time the petitioner has come up with this petition seeking enhancement of the cost directed to be paid by the respondent. This petition virtually would amount to seeking review of the order passed. Therefore, the present petition seeking enhancement of the cost cannot be entertained by this Court, especially when no such request was made when the matter came up for being mentioned on 05.06.2023.

15. In view of the discussions made earlier, both these applications are deserved to be dismissed.

16. Accordingly, the civil miscellaneous petitions are dismissed.

02.08.2023



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S.SOUNTHAR, J.

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C.M.P.Nos.16926 & 16929 of 2023

in

C.R.P.No.2640 of 2022

02.08.2023