



C.R.P.(MD).No.302 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.02.2023

DELIVERED ON: 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.302 of 2023

and

CMP(MD).No.1462 of 2023

Lakshmikantham

....Petitioner

Vs

1.Paramakudi Arasaradi Sri Yoga Muneeswarar Temple
Represented by its Administrative Committee Head and
Administrative Trustee
K.N.Devadoss

2.K.V.Hariharan

3.S.R.Naganathan

...Respondents

PRAYER: Civil Revision Case is filed under Section 115 of C.P.C, to set aside the impugned E.A.No.23 of 2022 in E.P.No.12 of 2019 in O.S.No. 161 of 1998 dated 25.11.2022 on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.R.Aravindan



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ORDER

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The present revision petition had been filed by the judgment debtor in a suit for recovery of possession.

2.The said decree has been confirmed by the High Court in S.A.No.269 of 2009. Based upon the decree, the plaintiffs had filed E.P.No.12 of 2019 to take delivery of the property. While the said application was pending, the revision petitioner/judgment debtor had filed E.A.No.23 of 2022 seeking stay of the execution proceedings. The said application was dismissed by the Executing Court. Challenging the same, the present Civil Revision Petition has been filed.

3.According to the learned counsel for the petitioner though a decree for recovery of possession has been ordered by this Court in the second appeal, he had filed a review application and the same is pending, in the condone delay stage. The learned counsel has placed a record, a computer print out relating to the history of case hearing.

4.A perusal of the said report indicates that CMP.(MD).No. 52291 of 2019 in Rev.Aplc(MD).No.52289 of 2019 is pending. Therefore,



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it is clear that the review application is yet to be numbered and it is pending in the condone delay stage from the year 2019 onwards. The petitioner has neither taken steps to get the delay condoned nor to number the review application. So far no interim order has been granted by this Court in the review application.

5.From the records, it could be seen that the petitioner has already filed another Interlocutory Application in I.A.No.8 of 2021 and the same was dismissed on merits. The present application is a second stay petition citing the pendency of the review application before this Court in the condone delay stage.

6.A perusal of the application points out that the present application has been filed under Order 21 Rule 29 C.P.C. However, there are no pleadings to the effect that any suit is pending as against the decree holder which was filed by the judgment debtor. In such view of the matter, I do not find that the stay petition under Order 21 Rule 29 C.P.C is maintainable before the Executing Court.



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7.The Executing Judge has rightly arrived at a finding that mere pendency of the review application would not amount to stay. It is also brought to the notice of the Court that one of the tenants had filed SLP.No. 23424 of 2019 challenging an order passed by this Court in S.A.No.269 of 2009. The said Special Leave Petition has been dismissed by the Hon'ble Supreme Court on 04.10.2019. Therefore, it is seen that a last attempt is being made by the judgement debtor to stop delivery of possession.

8.I do not find any merit in the revision petition. There is no infirmity or illegality in the order passed by the Executing Court. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

- 1.The District Munsif, Paramakudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(MD).No.302 of 2023
and
CMP(MD).No.1462 of 2023

14.02.2023