



C.R.P.(MD).No.432 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2023

DELIVERED ON: 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.432 of 2023

and

C.M.P(MD).No.2084 of 2023

Nakoda Homes Pvt.Ltd.,
Represented through its partner S.Bhawarlal

...Petitioner

Vs

1.Arumuga Nainar Trust
Represented by its Trustee S.Venugopal

2.S.Durga Balakumar

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in E.A.No.271 of 2022 in E.P.No.93 of 2021 in O.S.No.976 of 2013 dated 07.01.2023 on the file of the Additional District Munsif Court, Madurai Town by allowing this civil revision petition.

For Petitioner : Mr.H.Arumugam

For R1 : Mr.T.R.Subramanian



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ORDER

The present civil revision petition has been filed by the judgement debtor in a suit for recovery of possession.

2. For executing the said decree, the plaintiff had filed E.P.No.93 of 2021. While the said execution petition was pending, the judgement debtor had filed E.A.No.271 of 2022 under Order 21 Rule 29 C.P.C to stay the execution proceedings. The said application was dismissed. Challenging the same, the present civil revision petition has been filed.

3. According to the judgement debtor, he had filed O.S.No.290 of 2021 as against the decree holder for the relief of refund of advance amount arising out of a sale agreement along with a prayer for permanent injunction not to interfere with the possession and enjoyment of the property till the plaintiffs are vacated by due process of law. Therefore, the judgement debtor had contended that in view of pendency of O.S.No.290 of 2021, the execution proceedings in E.P.No.93 of 2021 in O.S.No.976 of 2013 have to be stayed.

4. A perusal of the decree in O.S.No.976 of 2013 indicates that Thirupparankundram Arumuga Nainar Trust is the plaintiff and Nakoda



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Homes Pvt. Limited is the defendant. The said Nakoda Homes Pvt. Limited has suffered a decree for recovery of possession. A perusal of plaint in O.S.No.290 of 2021 reveals that 3 individuals are the plaintiffs and 3 other individuals are the defendants. The defendants are said to be the trustees of Thirupparankundram Arumuga Nainar Trust.

5.It is specifically stated in Paragraph No.14 of the plaint in O.S.No.290 of 2021 that the advance amount pursuant to the sale agreement has been received by the trustees in their individual capacity and they have utilised the same for their personal benefits. It is further stated that the advance amount has not been utilised by the trustees. Therefore, it is clear that the decree holder and the judgement debtor in O.S.No.976 of 2013 and the plaintiffs and the defendants in O.S.No.290 of 2021 are completely different.

6.The Hon'ble Supreme Court in a judgement reported ***in (1972) 2 SCC 731 (Shaukat Hussain alias Ali Akram and others Vs. Smt.Bhuneshwari Devi (dead) by L.rs. and others)*** in Paragraph No.6 has held as follows:

“6.....

It is obvious from a mere perusal of the rule that there



*should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr. Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the court of Munsif 1st Gaya and there was also a suit at the instance of the judgment-debtor against the decree holder in that court. But there is a snag in that rule. **It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court.** The words "such court" are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule.*

7.A careful scrutiny of the judgement of the Hon'ble Supreme Court would clearly indicate that the judgement debtor in the first suit should be the plaintiff in the pending second suit and the decree holder in the first suit should be the defendant in the pending second suit. However, in the present case, the decree holder and the judgement debtor in the first



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suit are not at all parties in the second suit. Therefore, the question of invoking Order 21 Rule 29 of C.P.C to stay the execution proceedings in the first suit does not arise.

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

09.03.2023

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

To

The Additional District Munsif,
Madurai Town



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made
in
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