



C.R.P.(MD).No.798 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	23.08.2023
Pronounced on	20 .12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.798 of 2023

and

C.M.P(MD)No.3670 of 2023

Jeyachandran

... Revision Petitioner

Versus

Umar Shah

... Respondent

Prayer : The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 22.12.2022 made in E.A.No.6 of 2022 in E.P.No.28 of 2019 in O.S.No.173 of 2016 on the file of the learned Principal District Munsif Court, Sivagiri.

For Revision Petitioner : Mr.V.Sasikumar

For Respondent : Mr.P.Arun Jayatram

ORDER



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WEB COPY This Civil Revision Petition is preferred as against the order dated 22.12.2022 passed in E.A.No.6 of 2022 in E.P.No.28 of 2019 in O.S.No.173 of 2016 on the file of the learned Principal District Munsif Court, Sivagiri.

2. According to the Revision Petitioner, the Respondent filed a suit in O.S.No.173 of 2016 on the file of the learned Principal District Munsif Court, Sivagiri for the relief of declaration and permanent injunction in respect of Schedule I and sought for mandatory injunction to remove the construction put up in II Schedule property and in the III Schedule property and to execute rectification deed bearing document No.480 of 2011 on the file of Sub Registrar, Sivagiri. Due to his illness and pandemic situation, the Revision Petitioner could not appear before the Trial Court and therefore, an *ex parte* decree was passed on 22.01.2019 in the above suit. After recovery, the Revision Petitioner approached his counsel and filed a petition for setting aside the *ex parte* decree in I.A.No.1 of 2022 in O.S.No.173 of 2016. In the mean time, the Respondent/Plaintiff proceeded with the execution proceedings and the Execution Petition was relied on 21.07.2022. The learned Principal District Munsif Court, Sivagiri also dismissed E.A.No.6 of



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2022, the said execution proceedings and the same also dismissed by the Trial Court stating that the Revision Petitioner failed to assign sufficient reasons.

3. The learned counsel appearing for the Revision Petitioner would submit that the Trial Court ought to have accepted the reason assigned by the Revision Petitioner in the affidavit and ought to have allowed the petitions filed under Order 21 Rule 26 of Code of Civil Procedure in E.A.No.6 of 2022 to stay the execution proceedings till the disposal of the petition filed by the Revision Petitioner for setting aside the *ex parte* decree passed in O.S.No.173 of 2016.

4. The Trial Court ought to have given opportunity to the Revision Petitioner to defend the case filed by the Respondent/Plaintiff and not to have dismissed the petition on the ground that no sufficient reasons were assigned. Hence, the learned counsel would submit that the order passed in E.A.No.6 of 2022 in E.P.No.28 of 2019 on the file of the learned Principal District Munsif, Sivagiri is liable to be set aside.



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5. On the other hand, the learned counsel appearing for the Respondent would submit that the Revision Petitioner made appearance through his counsel on 18.01.2017 and till 14.03.2018 failed to file his written statement inspite of several opportunities offered to him. Hence, the Trial Court after examining the Plaintiff as P.W.1 on 01.09.2018 passed an *ex parte* decree in favour of the Respondent/Plaintiff. Thereafter, the Respondent/Plaintiff filed E.P.No.23 of 2019 for executing the decree passed in his favour. On 23.01.2020, the Revision Petitioner appeared through his counsel and filed his counter on 01.12.2021 in the said Execution Petition. However, the Executing Court allowed the E.P.No.28 of 2019, the Revision Petitioner with malafide intention to see that the Respondent/Plaintiff should not enjoy the fruits of the decree, intentionally filed the above application in I.A.No.1 of 2022 for setting aside the *ex parte* decree passed against him.

6. The Respondent/Plaintiff also filed his counter. Though the Revision Petitioner/1st Defendant was aware of the *ex parte* decree passed against him, even on 22.01.2019 failed to file an application for setting aside the *ex parte* decree passed against him. After a lapse of 1238 days, the



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Revision Petitioner has come out with the said application in E.A.No.6 of 2022 under Order 21 Rule 26 of Code of Civil Procedure to stay the proceedings in E.P.No.28 of 2019. Hence, the Trial Court has rightly dismissed the application filed by the Revision Petitioner in E.A.No.6 of 2022 which calls for no interference.

7. Heard on both sides and perused the records.

8. Admittedly, the Respondent/Plaintiff filed a suit in O.S.No. 173 of 2016 against the Revision Petitioner/1st Defendant in which an *ex parte* decree was passed on 22.01.2019. Thereafter, the Respondent/Plaintiff filed E.P.No.28 of 2019 for executing the decree passed in his favour in which notice was served on the Revision Petitioner/1st Defendant. The Revision Petitioner appeared through his counsel and on 15.02.2022, the Execution Petition was allowed. Only thereafter, the Revision Petitioner had taken out an application in E.A.No.6 of 2022 for staying the E.P proceedings.

9. Even at the time of filing his counter in E.P.No.28 of 2019,



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the Revision Petitioner failed to file an application for setting aside the *ex parte* decree passed against him at the time of making appearance in execution proceedings. The Revision Petitioner had a knowledge of the *ex parte* decree passed against him on 22.01.2019 in which the Revision Petitioner had filed I.A.No.1 of 2022 in O.S.No.173 of 2016 for setting aside the *ex parte* decree after a lapse of 1238 days as pointed out by the learned counsel appearing for the Respondent/Plaintiff. The Revision Petitioner without taking any steps to file a petition for setting aside the *ex parte* decree passed against him belatedly filed the above application in E.A.No.6 of 2022. Considering the above facts, the Trial Court has rightly dismissed E.A.No.6 of 2022 by not accepting the reasons assigned by the Revision Petitioner in the above application.

10. The learned counsel appearing for the Revision Petitioner would contend that while the judgment debtor filed an application under Order 21 Rule 26 of Code of Civil Procedure for staying the Execution Petition pending order on his application for setting aside the *ex parte* decree and for condonation of delay, the Executing Court or Transferee Court has power to stay the Execution Petition. He would submit that Order 21 Rule



26 of Code of Civil Procedure will empower the Executing Court or the Transferee Court to grant the stay of execution and *ex parte* decree for a reasonable time so as to enable the judgment debtor to get further orders from the Trial Court either of the application under Section 5 of the Limitation Act or under Order 9 Rule 13 of Code of Civil Procedure.

11. Hence, the Trial Court ought to have stayed the Execution Petition pending orders on his application for setting aside the *ex parte* decree. To support his contention, the learned counsel for the Revision Petitioner has relied upon the decision case of this Court made in C.R.P.No. 3096 of 1998. The above decided case do not apply to the facts of the present case. It is clear that Order 21 Rule 26 of Code of Civil Procedure do not apply to cases where the decree is being executed by the same Court which passes the decree. In the present case, since the Court which passed the decree is the same functioning as the Executing Court. Therefore, the Executing Court cannot stay the execution proceedings in pursuant to the decree passed by the same Court.

12. Therefore, the contention of the learned counsel for the



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Revision Petitioner that in view of Rule 26 of Order 21 of Code of Civil Procedure, the Revision Petitioner is entitled to seek stay of execution proceedings till the Revision Petitioner obtains orders in the petition filed under Order 9 Rule 13 of Code of Civil Procedure is unsustainable, for the reason that Order 21 Rule 26 of Code of Civil Procedure relates to the power of the Court to which the decree has been sent for execution, staying the execution for reasonable time to enable the judgment debtor to apply to the Court by which the decree was passed. In the present case, the Revision Petitioner has filed the petition to stay the execution proceedings before the same Court which had passed the decree.

13. Therefore, no infirmity or perversity found in the orders passed by the Executing Court while dismissing E.A.No.6 of 2022. So, I find no merits in this Revision. Hence, this Civil Revision Petition is dismissed with costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2023

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Index:Yes/No

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Speaking Order : Yes/No

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To

The Principal District Munsif Court,
Sivagiri.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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and

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20.12.2023