



C.R.P(MD)No.1283 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1283 of 2019

and

C.M.P(MD)No.7056 of 2019

Annalakshmi

...Petitioner/Petitioner/
Defendant

Vs.

Padmavathy

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair order and decretal order dated 19.07.2019 made in I.A.No.1 of 2019 in O.S.No.1154 of 2017 on the file of the Principal District Munsif, Tiruchirapalli.

For Petitioner : Mr.P.Thiagarajan

For Respondent : No Appearance

ORDER

The civil revision petition has been filed against the order passed by the Principal District Munsif, Tiruchirapalli in I.A.No.1 of 2019 in O.S.No.1154 of 2017, dated 19.07.2019.



C.R.P(MD)No.1283 of 2019

WEB COPY

2. The petitioner herein is the petitioner/defendant and the respondent herein is the respondent/plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the Court below.

4. The learned counsel for the petitioner submits that the respondent/plaintiff herein has filed a suit for the relief of permanent injunction restraining this petitioner/defendant from interfering with the peaceful possession and enjoyment of the property. The learned counsel for the petitioner further submits that the respondent/plaintiff has given a false address of the petitioner/defendant and obtained an *ex parte* decree on 03.07.2018. Against the *ex parte* decree, he filed an application to set aside the *ex parte* decree. After the *ex parte* decree, the respondent/plaintiff has moved an application for the relief of police protection directing the Assistant Commissioner of Police, Law and Order, Srirangam, Trichy, to give police protection.

5. It appears from the record, even in the application filed for police protection, an *ex parte* order was passed as the postal cover sent to



the petitioner/defendant was returned as no residence. The order passed by the Court below is follows:

*"Respondent called absent respondent set ex parte.
Petition is allowed.
Issued notice to the concerned police station file
batta."*

6. The learned counsel for the petitioner submits that the very order passed by the Court below is cryptic in nature and that after passing a decree, if at all the petitioner has got any grievance, he has to file an execution petition. In this regard, the learned counsel for the petitioner relied on the following judgments:

(i) ***Narpat Singh Vs Rajasthan Financial Corporation*** reported in **2008 (1) CTC 73**. The relevant portion of the order is extracted hereunder:

"2. I.A.Nos.15-16 for clarification and direction of Court's Order dated 3.5.2007 are totally misconceived. Moreover, ordinarily nos. I.A. lies after a case is finally disposed of. Ordinarily, an I.A. is maintainable only in a pending case. Once a case is finally disposed of the Court becomes functus officio, and thereafter an I.A. lies ordinarily only for correcting clerical or accidental mistakes. The same are accordingly, dismissed."

(ii) ***Surya Pelle Chemical & Mould Vs Hi-Lite Leathers*** reported in **2019-3-L.W.970**. The relevant portion of the order is extracted hereunder:



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"13. Similarly in the Judgement reported in CDJ 2008 SC 775 – Bholi (Dead) by Lrs Vs. Lachhman Singh and others, the Honourable Supreme Court had observed that in an earlier round of litigation between the parties which went up to the Supreme Court, the Supreme Court had held as follows:

"An application was filed under Section 147 CPC for extension of time to deposit the second instalment which was rejected by the trial Court. Aggrieved thereby, the defendants filed an application under Section 115 CPC which was allowed by the High Court by extending the time enabling the defendants to deposit the second instalment. Against the order of the High Court the plaintiff filed C.A.No.3422 of 1996 before this Court which was disposed of on 30th October, 2002. The relevant portion of the order reads under:

It is not disputed that the settlement arrived at between the parties was made part of the decree of the Court. It was a decree like any other decree passed by the Civil Court. Once a decree is passed by the Court, it becomes functus officio to modify the decree. It is only the higher Court either to set aside the decree or to modify the decree. Since the Court, after passing the decrees became functus officio, it also had no power under Section 148 CPC to extend the time for depositing the money by modifying the terms of the decree which was passed on settlement between the parties. If the Court modifies the decree it varies the terms of the settlement which is not permissible. In that view of the matter, the High Court fell in error in extending the time for depositing the second instalment by the defendants. Consequently, the appeal deserves to be allowed."

7. From the perusal of the above judgment, what would emerge is

that whenever a decree is passed, unless the decree has got some clerical



C.R.P(MD)No.1283 of 2019

or accidental mistake, the Court which passes the decree, has no authority to modify the same. Here, on perusal of the decree, the Court below has granted a decree of injunction restraining the petitioner/defendant not to disturb the peaceful possession and enjoyment of the suit property either by trespassing into the same or dispossessing the respondent/plaintiff from in any manner whatsoever.

8. However, while perusing the petition filed by the respondent/plaintiff, he referred two judgments reported in **2015 (3) CTC 807** and **2006 (2) CTC 211**. In this regard, the learned counsel for the petitioner submits that judgment of this Court in the case of **Abdul Sukhure Bhai Vs Durai Kuppuswamy** reported in **2006 (2) CTC 211** is in respect of Crl.O.P. and not arisen out of the civil case.

9. This Court has perused the judgment of the learned Single Judge of this Court in the case of **Abdul Sukhure Bhai (cited supra)**, wherein, the learned Single Judge of this Court dealt with various aspects and ultimately at Paragraph No.13 in respect of various instances, in which police protection could be ordered:

13. The lower Courts are frequently confronted with the question of issuing police protection. Since the issuance of police aid is often raised in one way or other, by the lower Courts it is appropriate to issue the following guide lines:

In appropriate cases, Civil Court has the power to



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C.R.P(MD)No.1283 of 2019

issue suitable directions to police officials as servants of law to extend their aid and assistance in the execution of decrees and orders of Civil Courts or in implementing an order of injunction passed by it. (1992 TLNJ 120).

Ordering police protection has got serious consequences, impinging on the rights of the parties.

Police aid is not to be granted simultaneously with an order of injunction.

In cases where the lower Courts order police protection/police aid in the execution of decrees and orders of the civil Courts or in implementing an order of injunction passed by it, the Court is to record reasons as to how and why the case is the appropriate case to order police aid and for what purpose the police aid is ordered.

Police protection/police aid may not be ordered by a non-speaking order. Order of Court for police aid might give room for the parties to take law into their own hands. The party having the order of Court for police aid, might try to disturb the status quo - either by trying to take possession or trying to dispossess the opponent.

Order of the Court for police protection is to specifically indicate in precise terms the purpose for which police protection is ordered.

10. As per the above judgment, this Court has categorically stated that whenever the application filed for police protection and while ordering the same, it is the duty of the Court to pass a detailed order, otherwise it would give upper hand to the party, who is having the police protection and may try to disturb the *status quo* or try to take possession.



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11. While perusing the order of the Court below, it was so cryptic in nature and that the very order has been passed, based upon the substituted service. The learned counsel for the petitioner/defendant would submit that having knowledge about the change of address, the respondent/plaintiff has sent notice to the wrong address. It is also the submission of the learned counsel for the petitioner herein that they already moved an application to set aside the *ex parte* decree. Therefore, it is apparent that the very police protection was sought for by the respondent herein is based upon the *ex parte* decree, which is now in challenge.

12. In view of the above peculiar circumstances and when there is a remedy available to the petitioner to move an application for execution, filing the application for police protection would not augur well, and the cryptic nature of the order that too before the issuance of notice to the petitioner herein also entails the order to be set aside.

13. The learned counsel for the petitioner submits that, now the above case is transferred to District Munsif Court, Srirangam and re-numbered as O.S.No.24 of 2019. Therefore, the order passed in I.A.No.1 of 2019 is hereby set aside and remitted to the Court below and the Court below is directed to dispose of the same along with the application to set



C.R.P(MD)No.1283 of 2019

aside the *ex parte* decree and delay condonation application within a period of one month from the date of receipt of the copy of this order.

14. In the result, this civil revision petition stands **allowed** and the case is remitted back to the Court below to proceed according to law. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District Munsif,
Tiruchirapalli.
- 2.The District Munsif Court,
Srirangam.
- 3.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.1283 of 2019

C.KUMARAPPAN,J.

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C.R.P(MD)No.1283 of 2019

14.08.2023