



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Third day of January Two Thousand and Twenty Three

PRESENT

The Hon`ble Mrs.Justice N.MALA

CMP(MD) No.11273 of 2022
IN
AS(MD)No.101 of 2022

1 INDIRANI (DIED)

2 T.N.PRABHAKAR

3 HEMANALINI

... PETITIONERS/APPELLANTS

Vs

S.PARTHIBAN

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to stay of all further proceedings in EP.No. 124 of 2018 in O.S.No. 112 of 2011 on the file of the Learned 3rd Additional District Court, Trichirappalli, pending disposal of the above first appeal AS (MD).No. 101 of 2022.

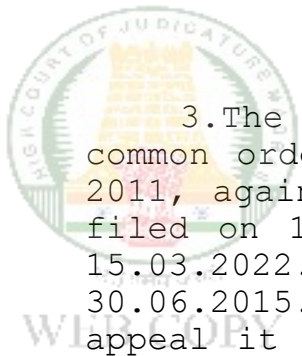
Prayer in AS(MD). 101/ 2022 :

To allow this appeal and thereby set aside the decree and judgment passed by the IIIrd Additional District Judge, Tiruchirappalli in O.S. No. 112 of 2011 dated 16.12.2014.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.P.SENTHIL, Advocate for the petitioner and of Mr.S.VINOD SATHYA LAZAR, Advocate on behalf of the Respondent, the court made the following order:-

This petition is filed to stay of all further proceedings in E.P.No.124 of 2018 in O.S.No.112 of 2011 on the file of the learned 3rd Additional District Court, Tiruchirappalli, pending disposal of the above first appeal in A.S.(MD)No.101 of 2022.

2.I have heard both side counsel at length.



3.The learned counsel for the petitioners submitted that the common order was passed by the Trial Court in O.S.Nos.75 & 112 of 2011, against which, 2 appeals were filed. AS(MD)No.102 of 2019 was filed on 12.03.2015 and the same was dismissed by this Court, on 15.03.2022. The present appeal in AS(MD)No.101 of 2022 was filed on 30.06.2015. As there was delay of 1448 days in representing the appeal it could not be numbered earlier and the same was numbered only on 04.03.2022. Thereafter, the appeal was taken up on file. Meanwhile, because of the long gap between the date of decree and the appeal, the respondent filed the execution petition in E.P.No.124 of 2018 for realisation of the decreetal amount with interest. In the said EP, an order was passed on 11.02.2020 for realisation of Rs.27,17,054/- with subsequent interest and for arrest of the judgment debtor/appellant.

4.The learned counsel for the respondent submitted that only after the order in EP, the petitioners woke up and prosecuted the appeal. He further submitted that the petitioners took more than 7 years to number the appeal which clearly establishes that the petitioners only want to drag on the proceedings and are not diligent in prosecuting the appeal.

5.The learned counsel for the petitioners on the other hand submitted that against the judgment and decree in A.S.No.101 of 2022 the appellants have filed an appeal before the Hon'ble Supreme Court in SLP.No.27921 of 2022 and that the result of the SLP will have a bearing on the present appeal. Therefore, the counsel submitted that unless an order of stay is granted, great hardship and irreparable loss would be caused to the appellant.

6.Considering the rival submissions of both side counsel, I am of the view that the petitioner has a *prima facie* case and the balance of convenience is also in favour of the petitioner. Interest of justice would be served if the petitioners are directed to deposit the decreetal amount of Rs.12 lakhs before the Execution Court as a condition for grant of interim stay.

7.The learned counsel for the petitioner has submitted that he may be permitted to make the payment in 2 installments and further reasonable time may be granted for depositing the decreetal amount of Rs.12 lakhs. The learned counsel further prayed for 6 weeks time to make the first payment of Rs.6 lakhs and further 6 weeks for the second installment.

8.The learned counsel for the respondent did not seriously dispute the same. I am therefore of the view that the the learned counsel for the petitioner shall be directed to pay the said amount in 2 installments on or before 15.02.2023 on the file of the Execution Court in E.P.No.124 of 2018. Thereafter, the second installment of Rs.6 lakhs shall be paid on or before on 30.03.2023.



CMP(MD) A



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the time stipulated, the interim order granted herein shall be automatically vacated without reference to this Court and the respondent shall be at liberty to prosecute the E.P.

9. Notice.

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sd/-
03/01/2023

/01/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSS
TO

THE III ADDITIONAL DISTRICT JUDGE,
TRICHIRAPPALLI.

+1. C.C. to M/S.M.P.SENTHIL Advocate SR.No.91

ORDER

IN

CMP (MD) No.11273 of 2022
IN

AS (MD) No.101 of 2022

Date : 03/01/2023

SA/VR/SAR.4/24.01.2023/3P/3C