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C.R.P.No.3512 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.No.3512 of 2022

R.Shanmugam

...Petitioner

Vs

1. The Assistant Engineer,
MES(D) North/Tondiarpet,
Chennai – 600 021.
2. The Contractor,
Installation of Transformers,
TNEB, M.E.S.,(D) North at
260, T.H.Road, Chennai – 600 021.
3. The Chairman,
TNEB, Anna Salai,
Chennai – 600 002.

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order and decretal order dated 06.03.2021 passed in the E.P.SR.No. 10329 of 2020 in O.S.No. 2772 of 2006 on the file of IX Assistant Judge, City Civil Court, Chennai may be set aside and the E.P. may be directed to be taken on file for disposal on merits.



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For Petitioners : Mr.D.Nellajappan

For R1 & R3 : Mr. S.T. Raja

For R2 : No appearance

ORDER

This Civil Revision Petition has been preferred as against the order passed in E.P.SR.No.10329 of 2020 in O.S.No. 2772 of 2006 wherein the petitioner herein has filed a execution petition under Order 21 Rule 32 of Civil Procedure Code to execute the order passed by the Trial Court by removing the newly erected transformer and its superstructure adjacent to the suit properties within two months on or before 11.10.2011.

2. The petitioner is the decree holder in O.S.No. 2772 of 2006 and he filed the main suit for the relief of mandatory injunction to remove the transformer installed in the suit property and for permanent injunction not to erect new transformer in the suit property. The said suit was decreed on 11.08.2011. Thereafter, the defendants have preferred an appeal in A.S.No. 503 of 2011 and the appeal was also dismissed on 21.07.2014. Therefore the



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decree has to be executed within three years since the decree is for mandatory injunction. But the Execution Petition was filed only in the year 2020. Therefore, the Trial Court declined to execute the Execution petition. Challenging the said order the present revision petition is filed.

3. The learned counsel for the petitioner would contend that he is the petitioner in this petition and decree holder in the suit. He filed a suit in O.S.No. 2772 of 2006 for the relief of mandatory injunction and for permanent injunction and the said suit was decreed on 11.08.2011. As against the said decree, the defendants have preferred an appeal in A.S.No. 503 of 2011 and the said appeal was also dismissed on 21.07.2014 by confirming the judgment of the Trial Court. As per the decree, the respondents have to remove the transformer but they have not removed the transformer and decree has also been passed for permanent injunction and also granted restraining the defendants from erecting new transformer in the suit property. Since there is no limitation for decree of permanent injunction, the execution petition was filed within a limitation period. But the Trial Court has failed to consider the same and rejected the execution petition on the ground that the petition is



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barred by limitation.

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4. The learned counsel appearing for the respondents would contend that date of decree is 11.08.2001 and the date of dismissal of appeal is 21.07.2014. As far as the mandatory injunction is concerned, as per the Limitation Act the time is only three years from the date of judgement, but the petitioner has not filed the execution petition within three years from the date of decree and the petitioner filed the execution petition after six years from the date of appeal. Therefore, the petition is not maintainable and thereby the Trial Court also dismissed the petition. As far as the relief in respect of the permanent injunction is concerned, there was no installation of transformer after the order of this Court. Therefore the second prayer would not arise. The Trial Court correctly rejected the petition on the ground of limitation. Therefore, the present Civil Revision petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on records.



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6. In this case, there is no dispute that the Trial Court has decreed the suit in favour of the petitioner through the judgement dated 11.08.2011 and therefore the defendants have preferred an appeal in A.S.No. 503 of 2011 before the first Appellate Court and the said appeal was also dismissed by confirming the judgment of the Trial Court dated 21.07.2014. The present execution petition was filed only in the year 2020. As per Article 135 of Limitation Act for the enforcement of decree granting mandatory injunction the limitation period is three years from the date of decree or whether the date is fixed for performance such date. In the case on hand also, the appeal was dismissed on 21.07.2014 and therefore within three years from the date of dismissed appeal, the petitioner ought to have filed the petition to execute the decree for mandatory injunction but he failed to do so. Therefore the present suit is barred by limitation.

7. The Trial Court also after careful consideration rejected the petition on the ground that execution petition for mandatory injunction to be filed within three years from the date of decree, therefore, the execution petition is



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barred by limitation and rejected the execution petition. The above said order passed by the Execution Court is well reasoned and it does not warrants any interference by this Court. In view of the above discussion this Court is of the view that this Civil Revision Petition has no merits and deserves to be dismissed.

8. In the result, this Civil Revision Petition is dismissed. No costs.

01.08.2024

nsI

Index : Yes/No

Internet : Yes/No

Citation : Yes/No

To

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4. IX Assistant Judge, City Civil Court,
Chennai

P.DHANABAL,J

ns1

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