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THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

C.R.P.[NPD].No.2445 of 2024 & CMP.No.12796 of 2024

Arulmigu Sridevi Adhi Parasakthi
Manakeshwari Amman Arutpani Arakattalai
Rep. by its Secretary D.Prakasam
No.50/2, Kenedy Square Cross Street,
KennedySquare, Sembium, Chennai – 600 011. . . . Petitioner

Versus

1. Ravi
2. R.Seran
   Proprietor RRS Travels
   No.50/2, Kennedy Square Street,
   Sembium Chennai – 600 011. . . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the docket Order passed on 15.03.2024 in E.A.No.8 of 2023 in E.A.No.1 of 2022 in E.P.No.3045 of 2021 on the file of the IX Assistant Judge, City Civil Court, Chennai by allowing the Revision.

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For petitioner : Ms.Srividhya Aravindan

For respondents : Mr.K.Venkatesan – R1
Mr.R.Thangamani – R2

O R D E R

Challenge has been made against the Order of the trial Court in allowing the application filed to restore the application filed under Order 21 Rule 97 and 98 of Code of Civil Procedure in E.A.No.1 of 2022 in E.P.No.3045 of 2021.

2. The revision petitioner has filed a suit in O.S.No.4580 of 2014 for recovery of possession as against the second respondent, who is his brother. The said suit has been decreed as against which an appeal has been originally filed in A.S.No.155 of 2019 and that appeal has also been dismissed on 06.01.2020. Thereafter, when the execution petition has been filed by the revision petitioner, once again, an appeal has been filed in AS.SR.No.14134

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of 2021. However, the said application has also been dismissed. When the execution petition has been filed for delivery of possession, at this stage, an application under Order XXI Rule 97 and 98 of Code of Civil Procedure has been filed by the second respondent, who is none other than the judgment debtor. He claims a right over the property on the basis of a tenancy agreement said to have been executed by the judgment debtor on 14.05.2021, by way of an unregistered lease deed for a period of five years. Based on the said lease deed, the above application has been taken out.

3. I have perused entire materials available on record. Though the Order of the trial Court allowing the application without any application filed to condone delay is not legal, this Court is of the view that in order to avoid technical objections, while recording delivery under Order XXI Rule 34 and 35 of Code of Civil Procedure, the so called obstructor should be given an opportunity. This Court also prima facie finds that the very agreement relied upon by the petitioner is not admissible in evidence, since the so called lease exceeds five years. That apart, the same came into existence after the decree

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reached its finality. It is also stated that the second appeal has also been filed and the same has also been dismissed.

4. In such view of the matter, the execution Court shall decide the execution petition within two months. Since, the obstructor has already been examined as P.W.1, cross examination has to be done by the revision petitioner within a period of one month and the execution petition has to be disposed within a period of two months from the date of receipt of a copy of this Order.

5. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.11.2024

Index : Yes / No
Internet: Yes
Speaking/non speaking order

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N. SATHISH KUMAR, J.

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