



C.R.P.No.2680 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.2680 of 2024
and C.M.P.No.14083 of 2024

Kumaran

... Petitioner

Vs

U.Jothi

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and decreetal order dated 04.04.2024 passed in E.A.No.2 of 2023 in E.P.No.6 of 2022 in O.S.No.138 of 2018 on the file of the District Munsif, Katpadi, Vellore District.

For Petitioner : Mr.D.Murugan

For Respondent : Mr.T.P.Prabakaran

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the learned District Munsif, Katpadi, Vellore District, on 04.04.2024 in E.A.No.2 of 2023 in E.P.No.6 of 2022 in O.S.No.138 of 2018.



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2. The brief facts of the case is that the petitioner is the defendant in the Suit filed by the respondent/ plaintiff in O.S.No.138 of 2018 before the learned District Munsif, Katpadi, Vellore District, seeking for a declaration of right and title over the 'B' Schedule mentioned property and a relief of Mandatory Injunction to remove the superstructure over the 'B' Schedule property and deliver the vacant possession to the plaintiff and also a relief of permanent injunction restraining the defendant from interfering in any manner with the plaintiff's peaceful possession and enjoyment of the suit properties. In the said suit, notice was served on the petitioner/defendant, he had entered appearance through his counsel, and despite several adjournments and conditional orders being given to him, he has not filed the written statement even after the statutory period, therefore, he was set ex-parte on 24.04.2019. Thereafter, the trial Court, based on the evidence of PW1 to PW3 and marking of Ex.A1 to A4, had decreed the suit vide Judgment dated 14.09.2020.

3. Thereafter, the respondent/plaintiff has filed an Execution Petition in E.P.No.6 of 2022 and in which the petitioner has filed a counter and thereafter, petitioner/defendant has filed the applications in I.A.Nos.1 & 2 of 2023



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respectively seeking to condone the delay of 1092 days in filing the set aside petition and to set aside the *ex-parte* decree dated 14.09.2020 stating that since the petitioner was ill and due to lack of communication with his counsel, there was a delay. Meanwhile, the petitioner had also filed an application in E.A.No.2 of 2023 under Order XXI Rule 26 of CPC seeking to stay all further execution proceedings till disposal of the suit in O.S.No.138 of 2018 on merits and its finality reached. The trial Court, finding that the Order XXI Rule 26 of CPC refers only to a transferee Court and will not be applicable to the same Court, had dismissed the application. Aggrieved over the same, the present revision petition has been filed by the petitioner.

4. Learned counsel for the petitioner submitted that the Order XXI Rule 26 of CPC will not only apply to the transferee Court but also to the transferor Court. The transferor court has power to stay the execution and the power of stay given to the transferor Court is an absolute power to grant stay. In this case, the Execution Petition is pending before the very same Court which has passed the decree and till the petition to set aside *ex parte* order is decided, the trial Court ought to have restrained the execution proceeding further. Thereby, he prayed to set aside the



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order passed in E.A.No.2 of 2023 dated 04.04.2024.

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5. Learned counsel for the respondent submitted that the prayer in E.A.No.2 of 2023 is only limited to the extend of stay all further proceedings in the execution petition till the disposal of the suit on merits and its finality reached. She further submitted that the trial Court had dismissed the petitions seeking to condone the delay and to set aside the *ex-parte* decree dated 14.09.2020, vide orders dated 22.08.2024 and therefore, as on today, nothing survives for further adjudication in this petition, since the prayer in E.A.No.2 of 2023 has now become infructuous.

6. Heard the learned counsel appearing for both the petitioner and the respondent and perused the materials available on record.

7. It is seen from the records that this Court, vide order dated 05.08.2024, had called for the Report from the District Munsif Court, Katpadi with regard to the status of I.A.Nos.1 & 2 of 2023 in O.S.No.138 of 2018. The Report has received from the Court concerned on 08.08.2024 stating that I.A.Nos.1 & 2 of 2023 in O.S.No.138 of 2018 filed by the defendants are pending for



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pronouncement of orders on 21.08.2024. It is now reported by the learned counsel for the respondent that the applications in I.A.Nos.1 & 2 of 2023 in O.S.No.138 of 2018 have been dismissed by the trial Court on 22.08.2024 and therefore, the prayer has become infructuous.

8. In view of the above, this Court finds that nothing survives for further adjudication in this petition. Accordingly, this Civil Revision Petition stands dismissed as infructuous. Consequently, the Civil Miscellaneous Petition is also closed. No costs.

27.08.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The District Munsif, Katpadi, Vellore District.



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A.D.JAGADISH CHANDIRA, J.
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***27.08.2024
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