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C.R.P.(PD).No.3212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3212 of 2024
and C.M.P.No.17148 of 2024

Aliya Ibrahim

.. Petitioner

Versus

1. Sherfunnissa Begum Sahiba Mosque Wakf
Represented by its Secretary,
New No.460, Old No.592,
Anna Salai, Chennai - 600 006.

2. Riyaz Ahmed Khan

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 08.07.2024 passed in E.A.No.10 of 2023 in E.P.No3059 of 2021 in O.S.No.5922 of 2002 by the IX Assistant City Civil Court at Chennai.

For Petitioner : Mr.L.Gavaskar

For Respondents : Mr.Hussain Afroze



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ORDER

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This Civil Revision Petition arises against the order passed in E.A.No.10 of 2023 in E.P.No.3059 of 2021 in O.S.No.5922 of 2002 on the file of the IX Assistant City Civil Court at Chennai.

2. The civil revision petitioner is the judgment debtor. O.S.No.5922 of 2002 was presented for the purpose of ejectment by the first respondent/plaintiff. The first respondent/plaintiff is a surveyed and notified waqf. It is admittedly the owner of the property. The suit was contested by the civil revision petitioner, as in the case of such suits, it came to be decreed by the I Assistant Court-cum-Waqf Tribunal at Chennai on 07.02.2008. Aggrieved by the same, the civil revision petitioner preferred an appeal before the V Additional City Civil Court in A.S.No.370 of 2008. The decree passed on 07.02.2008 stood confirmed by the learned V Additional Judge on 23.08.2010. Since the decree had been confirmed and as the civil revision petitioner had not handed over the possession of the property, the first respondent filed E.P.No.3059 of 2021 for taking delivery of possession.



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3. When the matter was listed before the executing Court on 12.09.2023, there was no representation on behalf of the judgment debtor. Therefore, he was set *ex parte*. In order to set aside the *ex parte* order, an application was filed invoking Order XXI Rule 106(3) of the Code of Civil Procedure by the civil revision petitioner.

4. The learned Judge issued notice in the said application and received a counter from the first respondent/decreed holder. The first respondent/decreed holder pointed out that it has become a habit for the civil revision petitioner to leave the matters *ex parte* and thereafter, come up with applications to set aside the same. It would point out that the proceeding has been dragged on for 14 years from the date of dismissal of lower Appellate Court and still the judgment debtor had been enjoying the property and at the same time, denying the benefits of the decree to the first respondent. It would also point out that two applications have been filed in E.A.No.6 of 2022 and E.A.No.7 of 2022 to condone the delay of 140 days in filing the application to set aside the *ex parte* order and on account of the grace that had been given by the Court, the said delay had been condoned.



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It would point out that there are absolutely no merits in the application and sought for dismissal of the same.

5. The learned Trial Judge took into consideration that the civil revision petitioner had already been set *ex parte* on 25.03.2022 and had the benefit of an order setting aside the same and yet again, had gone about to leave the proceedings *ex parte* on 12.09.2023 and therefore, felt that the petition is vexatious and hence dismissed the same. Against which, the present petition is filed.

6. When the matter came up for hearing on 09.08.2024, Mr.L.Gavaskar would submit that it was on account of the fact that the learned IX Assistant Judge was on Casual Leave, the matter was called before the learned X Assistant Judge. The party, who did not know the difference between the two Courts, was unable to be present before the learned X Assistant Judge in order to represent the matter. He would state that the Counsel himself was held up before another Court and therefore, there was no representation on the side of the judgment debtor which resulted in the *ex parte* order. Taking into consideration this plea, I directed



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Mr.L.Gavaskar to serve the entire set of papers on Mr.Hussaif Afroze and posted the matter today to hear him on the merits of the case.

7. Mr.Hussain Afroze would stiffly oppose the application and draw my attention to the e-Courts adjudication. He would point out that E.A.Nos.6 and 7 of 2022 itself were dragged on for nearly a period of one year and it had been finally allowed on 07.07.2023. He would point out that within two months of the order being set aside, yet again the judgment debtor had left the proceedings *ex parte*. He would state that there are absolutely no merits in the revision. The purpose of this revision is only to drag on the matter and somehow or the other, stick on to the property which admittedly belongs to a charitable institution. He would state that the plea that the party was confused between the two Courts is absolutely irrelevant and that the parties should have been vigilant enough to be present in the Court because he had already been set *ex parte* once before. Therefore, he would pray for dismissal of the revision.

8. I have carefully considered the arguments of Mr.L.Gavaskar and Mr.Hussain Afroze.



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9. It is not in dispute that the suit in O.S.No.5922 of 2002 was decreed. It is further not in dispute that the appeal preferred therefrom also ended in dismissal. In other words, the decree of eviction has attained finality. There was a delay in initiating the execution proceedings on account of the fact that the first respondent/plaintiff was represented by an Executive Officer and not by the trustees. It is only after the duly appointed trustees have taken over, they have taken steps to execute the decree obtained in the year 2008. Mr.L.Gavaskar's claim that the receipts have been issued by the Executive Officer and therefore, a new tenancy had been entered between the parties, is absolutely irrelevant because no new lease agreement has been produced before the Court.

10. The property is a Waqf property and not a private property. A person in occupation as a tenant would necessarily have to produce a lease deed as there cannot be a lease for a Waqf property over a period of three years, unless and until, it has a sanction of the Waqf board. A Mutawalli or an Executive Officer who stands in place of a trust board is equally bound by the Waqf Act. He can, at best, enter into a lease agreement for a period



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of 11 months. For any period above the period of 11 months, necessarily, it requires a sanction of the Waqf board. Therefore, the argument of Mr.L.Gavaskar that he continues to be a tenant to the property requires nothing but an order of rejection.

11. Nonetheless, I would take note of the fact that Mr.L.Gavaskar would plead that he was not in a position to appear in the Court on 25.09.2023 on account of the fact that he was held up in another Court. There had been several Courts in this city of Madras. It is possible that Mr.L.Gavaskar would have held up in another Court. The reason why the judgment debtor is not present is also equally convincing. The judgment debtor, being a Muslim lady, would not have been aware that there are two Courts functioning for the purpose of execution namely, the IX and X Assistant Court. I am able to perceive that she would have been present in the Court where the matter is regularly called namely, the IX Assistant Court and since the judicial officer is not present, she would have left the premises. Therefore, I am able to appreciate the difficulty in which the Counsel as well as the party had been placed.



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12. At the same time, I cannot be insensitive to the fact that the decree holder has been knocking at the doors of the Court for the past 22 years and is yet to see the fruits of the decree. Insofar as the plea of Mr.Hussain Afroze is concerned, that even in the year 2022, the judgment debtor had remained *ex parte* and therefore, second application is not maintainable, I need not labour myself very much on this point. As per the Order XXI Rule 106 of the Code of Civil Procedure, the party must give reasonable explanation for why he was not present on the date of hearing. The fact that he had previously become *ex parte* becomes irrelevant because that absence had already been condoned by the Court and the *ex parte* order passed against him had been set aside. For this, position of law has been settled by the Supreme Court of India in ***G.P.Srivatsava Vs. R.K.Raizada and Ors., (2000) 3 SCC 54.*** Therefore, the sheet anchor of the argument of Mr.Hussain Afroze does not require any consideration.

13. In the light of the above circumstances, this Civil Revision Petition stands allowed but on the following conditions:-



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(i) The first respondent/plaintiff will be compensated by a sum of Rs.20,000/- by the civil revision petitioner on or before 20.08.2024. On such payments, E.A.No.10 of 2023 will stand allowed;

(ii) The learned IX Assistant City Civil Court at Chennai is requested to dispose of the Execution Petition on or before 30.09.2024 after hearing the arguments of both the decree holder and the judgment debtor;

(iii) The learned Judge shall submit a report of compliance of this order on or before 14.10.2024;

(iv) The learned Judge shall take note of the fact that the decree has been pending execution for more than 12 years and shall ensure that unnecessary adjournments are not granted either to Mr.L.Gavaskar or to Mr.Hussain Afroze.

(v) No costs. Consequently, connected miscellaneous petition is closed.

13.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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To
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The IX Assistant Judge,
City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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