



C.R.P.[NPD].No.3161 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.3161 of 2024

1. Karunamoorthy

2. Senthilkumar

. . . Petitioners

Versus

1. Padma

2. Sandhanam

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 08.04.2024 made in R.E.P.No.6 of 2023 in O.S.No.164 of 2020 on the file of the District Munisf Court at Sendamangalam.

For petitioners : Mr.T.L.Thirumalaisamy

Respondents : Mr.T.Chendhan
for Mr.A.K.Athiban Vijay

ORDER



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Challenge has been made to the Order passed by the Execution Court in dismissing the Execution Proceedings filed by the revision petitioner, the present Civil Revision Petition has been filed.

2. The brief facts leading to filing of this revision petition is as follows
:

The revision petitioners originally filed a suit in O.S.No.164 of 2020 for mandatory injunction directing the defendants to remove the compound wall and gate said to have been constructed in the petitioners' land. The said suit has been decreed in favour of the petitioners. Challenging the said decree and judgment, it appears that the respondent has filed an appeal in A.S.No.30 of 2023 on the file of the Sub Court, Namakkal. However, no stay of the judgment and decree of the trial Court is granted by the first appellate Court. At this stage, the revision petitioner filed an execution petition to execute the decree passed in the above suit. The execution Court has dismissed the execution petition since the appeal in A.S.No.30 of 2023 is pending before the



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Sub Court, Namakkal. Challenging the same, the present revision petition has been filed.

3. Heard both sides and perused the entire materials available on record.

4. At the outset, this Court is of the view that the Order of the execution Court cannot be sustained in the eye of law for the simple reason that mere pendency of the appeal shall not operate as a stay of the proceedings as per Order 41 Rule 5 of Code of Civil Procedure. Order 41 Rule 5 of Code of Civil Procedure reads as follows :

"Order 41, Rule 5: Stay by Appellate court; (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the appellate court may for sufficient cause order stay of execution of such decree.

(Explanation : An order by the Appellate court for the stay of execution of the decree shall be effective from the



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date of the communication of such order to the court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate court shall, pending the receipt from the Appellate court of the order for the stay of execution for any order to the contrary, be acted upon by the court of first instance.)

(2) Stay by Court which passed the decree : Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the court making it is satisfied :

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.



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(4) Subject to the provisions of Sub-rule (3) the

court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of Rule 1, the court shall not make an order staying the execution of the decree."

The above provision makes it clear that mere pendency of an appeal, will not operate as a stay of the execution proceedings, unless the appellate Court stays the decree and judgment specifically. In such view of the matter, the Order impugned is liable to be set aside.

5. Accordingly, this Civil Revision Petition is allowed and the Order passed in R.E.P.No.6 of 2023 is set aside and the trial Court shall restore the execution proceedings and proceed in accordance with law. It is open to the respondent to approach the appellate Court for obtaining stay of the decree and judgment. At this stage, the learned counsel appearing for the respondent submitted that they had already filed an application in I.A.No.2 of 2023 for



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stay in the appeal. However, the same has been withdrawn after the closure of the Execution Petition. In such view of the matter, liberty is granted to the respondent to file a fresh application for stay of the execution proceedings before the appellate Court. No costs.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order
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N. SATHISH KUMAR, J.

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