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C.R.P.(PD)No.4428 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4428 of 2024

and

C.M.P.No.24662 of 2024

Amirthambal

.. Petitioner

Vs

S.Vignesh

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the I Additional District Court, Tiruppur, to hear and decide I.A.Diary No.3099 of 2024, and connected condone delay application filed on 17.10.2024 in O.S.No.155 of 2016, before the I Additional District Court, Tiruppur, before proceeding with the execution proceedings pertaining to E.P.No.35 of 2017.

For Petitioner : Mr.G.K.Muthukumar
For Respondent : Mr.Shivakumar

ORDER



C.R.P.(PD)No.4428 of 2024

This Civil Revision Petition seeks for direction to the I Additional

District Judge, Tiruppur to hear and decide I.A.Diary No.. 3099 of 2024 and the connected condone delay application filed on 17.10.2024 in O.S.No.155 of 2016, before proceeding with E.P.No.35 of 2017.

2. The civil revision petitioner is the defendant in the suit. O.S.No.155 of 2016 had been filed for specific performance of an agreement of sale dated 27.08.2014. The suit came to be decreed on 03.08.2016. Thereafter, a sale deed was executed in favour of the respondent pursuant to the orders in E.P.No.35 of 2017 dated 07.12.2023. The decree holder has initiated the proceedings for delivery of possession. At that stage, the civil revision petitioner filed an application in I.A.SR.No.3099 of 2024 seeking to set aside the *exparte* decree dated 03.08.2016. As the learned Judge proceeded with the execution proceedings without taking into consideration, the pendency of the petitions, the defendant is on revision before this Court for the aforesaid relief.

3. When the matter came up for admission, I requested Mr.G.K.Muthukumar to serve a copy of entire set of papers to the counsel



C.R.P.(PD)No.4428 of 2024

who represents the decree holder before the Court below.

Mr.Muthukumar served the papers, pursuant to which M/s.Shiva Kumar and Suresh have entered appearance for the respondent.

4. Mr.Shiva Kumar brought to my notice that prior to the filing of I.A.SR.No.3099 of 2024., the defendant filed an application in I.A.No.1161 of 2018 seeking to set aside the *exparte* decree and the said application came to be dismissed for default. Mr.G.K.Muthukumar also produced a copy of the said affidavit along with docket order.

5. Mr.Shiva Kumar pointed out that as I.A.No.1161 of 2018 had been dismissed for default on 23.11.2022, the defendant is not entitled to file a fresh application to set aside the *exparte* decree in I.A.SR.No.3099 of 2024. Finding this difficulty, Mr. Muthukumar sought time to file application to restore I.A.1161 of 2018. Hence I posted the matter today (27.11.2024).

6. Mr.Muthukumar represented that the application filed to condone the delay to restore I.A.No.1161 of 2018 has been numbered as I.A.No.858 of 2024.



C.R.P.(PD)No.4428 of 2024

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7. In the light of the subsequent application having been filed in I.A.No.858 of 2024, the prayer sought for by the civil revision petitioner cannot be granted.

8. A perusal of the order dated 23.11.2022 shows that on an earlier date of hearing the learned counsel appearing for civil revision petitioner had pleaded 'no instructions'. Therefore, the learned District Judge shall verify, if notice had been served on the parties, prior to reporting 'no instructions'. In such an eventuality the learned Trial Judge shall follow the direction of the Supreme Court in ***Tahil Ram Issardas Sadarangani Vs. Ram Chand Issardas Sadarangani (1993 Supp(3)SCC 256)*** and ***Malkiat Singh & Anr. Vs. Joginder Singh & ors. (1998 2 SCC 206)***

9. As for the request of stay made by Mr.Muthukumar, it is open to him to file an appropriate application before the learned Trial Judge pleading that the proceedings may be kept in abeyance till the disposal of Section 5 application vide the Judgment in ***M.Nazruddin Vs. The Idol of Arulmigu Navaneedha Krishnasami (1999 1 MLJ 747)***.



C.R.P.(PD)No.4428 of 2024

10. Considering the facts and circumstances of the case, the learned District Judge, Tirupur shall dispose I.A.No.858/2024 within a period of **eight weeks** from the date of receipt of a copy of this order. The learned Trial Judge need not wait for service of notice in I.A.No.858 of 2024 as the papers have already been served on Mr.Sivakumar who represents the decree holder in this Court.

This Civil Revision Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
arr



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C.R.P.(PD)No.4428 of 2024

V. LAKSHMINARAYANAN,J.

arr

To

The I Additional District Court,
Tiruppur.

C.R.P.(PD)No.4428 of 2024

27.11.2024