



C.R.P.No.4691 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 25.11.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.4691 of 2024 &  
CMP.No.26214 of 2024

T.Manavalan

.. Petitioner

**Versus**

D.Parimala

.. Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 23.08.2024 passed in I.A.No.2 of 2024 in O.S.No.378 of 2022 on the file of the I Additional District Court, Tindivanam.

For Petitioner : Ms.C.Jayachithra

**ORDER**

This civil revision petition challenges the order of the learned I Additional District Judge, Tindivanam in I.A.No.2 of 2024 in O.S.No.378 of 2022.



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2. O.S.No.378 of 2022 is a suit seeking for preliminary decree of the mortgaged property and for consequential reliefs.

3. The civil revision petitioner is the defendant in the said suit. Prior to the presentation of this suit, he had filed I.P.No.1 of 2022 on the file of the Subordinate Court, Gingee.

4. On being served with summons in the mortgage suit, he took out an application under Section 10 of the Code of Civil Procedure stating that trial of the mortgage suit must be kept in abeyance, till the disposal of the insolvency proceedings.

5. The learned I Additional District Judge dismissed the petition. Hence, this revision.

6. I heard Ms.Jayachithra for the civil revision petitioner.

7. Ms.Jayachithra points out that the respondent is also a party in I.P.No.1 of 2022. This proceedings had been initiated much earlier to the mortgage suit. Therefore, she pleads that the defendant is entitled for a stay



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of the suit proceedings, till the disposal of insolvency proceedings before the learned Subordinate Judge.

8. I have carefully considered the submissions of Ms.Jayachithra.

9. Under Section 29 of the Provincial Insolvency Act, once an order of adjudication is made in the insolvency proceedings, the court has the discretion either to stay the suit or other proceedings, or permit a party to continue the proceedings on imposition of certain conditions. This shows that there must be an adjudication in the insolvency proceedings. Adjudication implies the court must come to a conclusion that the debtor's petition deserves admission and after admitting it, he must have been declared as an insolvent. There is no dispute that the insolvency proceeding is still in the stage of summons and has not reached the stage of adjudication.

10. Apart from this fact, the plaintiff is not an ordinary creditor but a secured creditor. She is entitled to keep away from the insolvency proceedings and enforce her security. Unless and until, she submits herself



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to the jurisdiction of the insolvency court, her right to enforce the security is not lost. A mortgage deed is a security and the mortgagee is entitled to keep away from the insolvency proceeding. That being the position of law, there is no necessity to stay the mortgage suit, pending an insolvency proceeding.

11. In the light of the above discussion, I am not inclined to interfere. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no  
Speaking order/Non-speaking order  
Neutral Citation : yes/no



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To

The I Additional District Court, Tindivanam.



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**V.LAKSHMINARAYANAN, J.**

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