



CRP.No.4939 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4939 of 2024
and C.M.P.No.27818 of 2024

A.K.Basha

.. Petitioner

Versus

Vaniga Vysya Sangam
Thiruppadiripuliyur, Cuddalore
Represented by its President and Secretary
Sri Veda Vinayagar Koil
No.55, Vandipalayam Road
Thirupapuliyur, Cuddalore – 607 002

.. Respondent

Prayer:- Civil Revision Petition filed under Section 151 of Code of Civil Procedure, to set aside the fair and decretal order dated 04.10.2024 passed in E.P.No.52 of 2021 in O.S.No.217 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.D.Baskar

ORDER

This revision has been filed challenging the order of the executing court ordering delivery.



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2. The suit has been originally filed for recovery of possession in O.S.No.217 of 2014 on the file of Principal District Munsif Court, Cuddalore, the same has been decreed for recovery of possession. As against which appeal has been filed by the revision petitioner in A.S.No.50 of 2017 and the said appeal has been dismissed for default. It is stated by the learned counsel for the petitioner that they have filed an application to restore the appeal and the same is pending. However, the execution petition has been filed for delivery of possession. A stand has been taken in the execution petition as if the Civil Court has no jurisdiction, only Rent Control Act will apply. However, the Trial Court has negated such contention of the revision petitioner and ordered delivery. Challenging the said order, the instant revision has been filed

3. The main contention of the learned counsel for the petitioner is that he has already filed an application to restore the appeal and the Civil Court jurisdiction is ousted. Since it is only a private trust, only rent control proceedings will apply. The Trial Court has not considered this issue and therefore, when the jurisdictional issue is involved, delivery cannot be ordered. Hence, seeks for allowing this revision.



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4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. At the outset, when the Court has posed the very question as to whether the defence was taken in the written statement as to the jurisdiction, it is submitted that such defence has not been taken. Therefore, once the Civil Court has decided the matter, the jurisdictional issue has never raised, the Executing Court cannot go beyond the decree. Be that as it may, even assuming that application has been filed to restore the appeal that will not operate as a stay in proceedings taken pursuant to the decree. Therefore, even as rightly held by the Trial Court, in the event the revision petitioner succeeds in the appeal, he is not remedy less, he can always invoke the provisions for restitution of his possession.

6. Such view of the matter, I do not find any merits in this petition and this revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

05.12.2024

dhk

Index : Yes/No

Internet : Yes/No



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N.SATHISH KUMAR, J.,

dhk

To,

The Principal District Munsif
Principal District Munsif Court
Cuddalore

C.R.P.No.4939 of 2024

05.12.2024