



C.R.P.(MD) No.2350 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	18.11.2024
Pronounced on	04.12.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2350 of 2024

and

C.M.P.(MD) No.13343 of 2024

M.B.Amarbabu
S/o.Balaramaiyar

... Petitioner

Vs.

Rukumani (died)

1.R.Ramesh
S/o.Ramaiyan

R.Gopal (died)

2.Ramesh
Engineer, Swathi Construction,
Thukkampalaya Street,
Kumbakonam Town,
Thanjavur District.

3.Vedha @ Vedhaselvam
S/o.Andichamy

4.The Town Planning Officer,
Kumbakonam Corporation Office,
Dr.Moorthy Road,



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Kumbakonam Town,
Thanjavur District.

5.The Commissioner,
Kumbakonam Corporation Office,
Dr.Moorthy Road,
Kumbakonam Town,
Thanjavur District.

6.The District Collector,
Collectorate Office,
Thanjavur,
Thanjavur District.

7.Thilagavathi,
W/o.Gopal

8.Haripriya,
D/o.Gopal

9.Saikrishna (Minor)
S/o.Gopal
represented by his mother
and natural guardian 7th respondent

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order passed in I.A.No.308 of 2019 in O.S.No.154 of 2019 dated 14.08.2024 on the file of the Principal District Munsif Court, Kumbakonam, and to extend the Interim Injunction till the disposal of the main suit.

For Petitioner : Mr.M.S.Suresh Kumar

For R1 : Mr.B.Anandan



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For R2 : Mr.B.Jameel Arasu
For R4 & R6 : Mr.B.Saravanan
Additional Government Pleader
For R5 : Mr.M.Rajarajan
Standing Counsel
For R3, R7 & R8 : No appearance

ORDER

This Civil Revision Petition has been filed against the docket order dated 14.08.2024 passed by the Principal District Munsif Court, Kumbakonam, in I.A.No.308 of 2019 in O.S.No.154 of 2019.

2. The facts of the case are that the revision petitioner, as plaintiff, filed the above suit in O.S.No.154 of 2019 before the Principal District Munsif Court, Kumbakonam, for a permanent injunction and for a mandatory injunction against the respondents/defendants; that at the time of filing the suit, the revision petitioner/plaintiff filed an application under Order 39, Rules 1 to 3 of the CPC for an interim injunction; that the trial court, by its order dated 02.04.2019, granted an *ex parte* interim injunction, which was extended up to 14.08.2024; and that on 14.08.2024, the trial court passed the following orders:



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“I.A.No..326/24, I.A.329/24 in O.S.No.154/19 - Counter of R1 to R3 and R5 adjourned call on 22.08.2024 I.A.377/21 in O.S.No.154/19 - Respondent side enquiry adjourned call on 22.08.2024 I.A.308/19 in O.S.154/19-I.O. extended memo not filed. Hence I.O. not extended. I.A.s are pending call on 22.08.2024 Steps for 1st Defendant call on 22.08.2024. Now the case is posted on 30.09.2024 for enquiry.”

3. Aggrieved by the same, the present Civil Revision Petition has been filed by the revision petitioner/plaintiff.

4. The learned counsel for the revision petitioner/plaintiff would submit that, taking advantage of the non-extension of the interim injunction, the third respondent started construction; that meanwhile, the first to third respondents filed an application in I.A.No.381 of 2019 for vacating the interim injunction, and the same is posted for enquiry; that the trial court, without conducting an enquiry on the above applications, by the impugned docket order, simply stated that the memo for extension of the interim injunction had not been filed and the interim injunction was not extended; and that the non-extension of the interim injunction by the trial court on the ground that no memo had been filed for its extension is nothing but an abuse of the process of the court, and would pray for



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invoking the power of superintendence on the subordinate courts conferred on this Court in order to ensure that the subordinate courts exercise their power in a proper and just manner. To support his contention, he relied upon the judgment of this Court in ***Thirugnanasambandam v. Sundaramurthy Chettiar and others***, reported in **2014 (4) CTC 850**, in which it has been held that this Court has the power of superintendence under Article 227 of the Constitution of India over subordinate courts.

5. On the other hand, the learned counsel for the first respondent would submit that the present Civil Revision Petition is not maintainable and that only an appeal lies under Order 43, Rule 1(r) of the CPC; therefore, the present Civil Revision Petition is liable to be dismissed. To support of his contention, he relied upon the judgment of the Gauhati High Court in ***Akmal Ali and others and etc. v. State of Assam and others***, reported in **AIR 1984 GAU 86**, in which it has been held that only an appeal lies under Order 43, Rule 1(r) of the CPC.

6. Heard on both sides. Records perused.



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7. The question that arises for consideration in the present Civil Revision Petition is whether it is maintainable against the docket order passed by the trial court.

8. It is no doubt that, as per Order 43, Rule 1(r) of the CPC, against the orders passed under Rules 1, 2, 2-A, 4, and 10 of Order 39 of the CPC, i.e., interim orders or interim injunctions, only an appeal lies under the provisions of Section 104 of the CPC. In the present case, the facts are that the *ex parte* interim injunction was already granted by the trial court on 02.04.2019, and the same was extended up to 14.08.2024; however, after 14.08.2024, the interim injunction was not extended due to the non-filing of a memo for its extension. As per the second proviso to Order 39, Rule 4 of the CPC, the trial court, after granting the *ex parte* injunction, may discharge, vary, or set aside the said injunction, when there was a change in the circumstances or the court was satisfied that the order had caused undue hardship to the opposite party.

9. But in the present case, the trial court was not inclined to extend the interim injunction due to the non-filing of a memo for its extension. However, the trial court has not recorded any reasons either for a change



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in circumstances or for the undue hardship caused to the opposite party.

Moreover, the first to third respondents have also filed an application for vacating the interim injunction, which is pending enquiry. No final orders have been passed by the trial court in the interim injunction application or on the application for vacating the injunction, on merits.

10. Taking into account the totality of the circumstances, this Court is of the considered view that the trial court has committed a jurisdictional error by not extending the interim injunction without dealing with the matter on merits. Since no final order has been passed by the trial court on merits, this Court deems it appropriate to exercise the power of superintendence conferred on it. It is apparent that the trial court has passed the impugned order in a very superficial manner without considering the merits of the case. Therefore, the docket order under revision suffers from fundamental irregularity, which warrants interference by this Court under Article 227 of the Constitution of India.

11. Thus, invoking the extraordinary constitutional jurisdiction conferred under Article 227 of the Constitution of India, the impugned order is set aside, and the matter is remitted back to the trial court with the



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direction that the trial court shall dispose of the application filed by the respondents 2 and 3 to vacate the interim injunction on merits, after giving sufficient opportunities to the parties, preferably within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the trial Court is also directed to dispose the suit within a period of six months.

12. In the result, this Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.12.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

Copy To:

- 1.The Principal District Munsif,
Kumbakonam,
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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made
in
C.R.P.(MD) No.2350 of 2024
and
C.M.P.(MD) No.13343 of 2024

04.12.2024