

**Munusamy Vs. Ramachandran**

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**Court :** Chennai

**Decided On :** Aug-01-2013

**Judge :** K.Ravichandrabaabu

**Appellant :** Munusamy

**Respondent :** Ramachandran

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

01. 08.2013 CORAM THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU  
Civil Revision Petition (NPD)NO.3248 of 2012 and M.P.No.1 of 2012 .....  
Munusamy .. Petitioner Vs. Ramachandran .. Respondent Petition filed under  
Section 115 of the CPC against the order dated 28.6.2012 in E.A.No.2 of 2012 in  
E.P.No.8 of 2009 in O.S.No.43 of 2000 on the file of the learned Subordinate  
Judge, Gingee. For Petitioners : Mr. ADV. Alexander.G. For Respondents : Mr. R.  
Murugesan

**ORDER**

The petitioner is the defendant in O.S.No.43 of 2000 filed by the respondent herein  
for recovery of money.

2. The said suit filed before the Sub Court, Tindivanam, came to be decreed  
exparte on 6.6.2000. After nine years, the respondent/ decree holder filed  
E.P.No.8 of 2009 on the file of the Sub Court, Gingee as the suit was

subsequently transferred to the said Court from Sub Court, Tindivanam, in view of bifurcation of the territorial jurisdiction. In the said execution petition, the petitioner was served with notice on 24.7.2009. After receiving such notice, he filed I.A.No.546 of 2009 under Section 5 of the Limitation Act seeking to condone the delay in filing a petition to set aside the exparte decree made in O.S.No.43 of 2000. The said application was filed on 26.7.2009 before the Sub Court, Tindivanam. Since the said suit itself was already transferred to Sub Court, Gingee, the said application was also transferred to Sub Court, Gingee.

3. Now it is stated by the learned counsel appearing for both sides that I.A.No.546 of 2009 is now pending before the Sub Court, Gingee. Since the application filed under Section 5 of the Limitation Act is pending, the petitioner filed E.A.No.2 of 2011 before the Executing Court seeking for stay of the execution proceedings till the disposal of the I.A.No.546 of 2009. The said application was rejected by the Court below on the ground that the petitioner has not taken any steps to get the disposal of the said I.A.No.546 of 2009. Aggrieved against the said order, the present civil revision petition is filed before this Court.

4. Heard the learned counsel appearing on either side.

5. It is submitted by the learned counsel for the petitioner that no summon was served on the petitioner in the suit and he came to know about the exparte decree only after receiving notice in the execution proceedings that too, on 24.7.2009. Therefore, he contended that immediately, the petitioner filed an application under Section 5 of the Limitation Act and consequently, he also filed E.A.No.2 of 2011 seeking for stay of the execution proceedings.

6. Per contra, the learned counsel appearing for the respondent/ decree holder submitted that the suit was decreed as early as on 6.6.2000 and even though the execution proceedings were filed only in the year 2009, the petitioner/ defendant has not taken any steps to file a petition to set aside the exparte decree for nearly nine years and therefore, there is no bonafide on the part of the petitioner.

7. As the petitioner had already filed an application under Section 5 of the Limitation Act in I.A.No.546 of 2009 and the same is still pending without

adjudication, I am not expressing any view on the merits and contentions raised by the respective parties on this aspect. It is for the Court below to consider the same and decide the said application on merits and in accordance with law.

8. The only issue before this Court is with regard to stay of the execution proceedings pending disposal of I.A.No.546 of 2009. A perusal of the order passed by the Court below would show that the petitioner was already granted four months time by the Executing Court. In spite of granting such time, the petitioner has not taken any steps to get the I.A.No.546 of 2009 to be disposed of. As the fact remains that both the application as well as the execution proceedings are pending in the same Court, I am of the view that if a direction is issued to the lower Court to dispose of the I.A.No.546 of 2009 at an early date, that would give quietus to the matter. Therefore, without expressing any view on the merits and contentions of the parties, I direct the Subordinate Judge, Gingee, to dispose of I.A.No.546 of 2009 in O.S.No.43 of 2000 on merits and in accordance with law, after affording reasonable opportunities to the respective parties, within a period of two months from the date of receipt of a copy of this order. Pending disposal of such application, the respondent/ decree holder shall not execute the decree passed in O.S.No.43 of 2000.

9. With the above observation and direction, this civil revision petition is disposed of. Consequently, M.P.No.1 of 2012 is closed. No costs. ra To The Subordinate Judge Gingee

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