

Ponirulandi Vs. Vellaiammal and Another

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Court : Chennai Madurai

Decided On : Oct-21-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(NPD)(MD)No. 2134 of 2016 & C.M.P(MD)No. 10000 of 2016

Appellant : Ponirulandi

Respondent : Vellaiammal and Another

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying this Court to set aside the fair and decretal order made in E.A.No.71 of 2016 in E.P.No.86 of 2015 in O.S.No.27 of 2010, dated 15.09.2016 on the file of the Principal District Munsif Court, Thoothukudi.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order made in E.A.No.71 of 2016 in E.P.No.86 of 2015 in O.S.No.27 of 2010, dated 15.09.2016 on the file of the Principal District Munsif Court, Thoothukudi.

2. According to the Petitioner, the second respondent herein has filed a suit in O.S.No.27 of 2010 against the Petitioner and first respondent for declaration and consequential injunction. The aforesaid suit was contested by the Petitioner and first respondent herein. A counter claim relief is sought for by the first respondent .By judgement and decree, dated 28.02.2012, the suit filed by the second

respondent was dismissed and the counter-claim filed by the first respondent was allowed. Aggrieved by the judgement and decree passed by the trial Court, the Petitioner filed an appeal suit before the Sub-Court, Thoothukudi. Along with the appeal suit, I.A.No.355 of 2016 to condone the delay of 1321 days in filing the above appeal suit was also filed. The aforesaid application is still pending before the appellate Court. In the meantime, the first respondent filed an execution petition in E.P.No.86 of 2015 seeking an order of arrest on false pretext that the Petitioner has breached the order of injunction. In the aforesaid E.P, the first respondent herein has preferred an execution application in E.A.No.71 of 2016 for police protection to enforce the order of injunction. The aforesaid application was allowed. Aggrieved by the same, the Petitioner has come forward with the present Civil Revision Petition for the relief stated supra.

3. Heard the learned counsel for the Petitioner and perused the materials available on record.

4. The revision Petitioner had already filed an appeal suit before the Subordinate Court, Thoothukudi. In the aforesaid appeal suit, the Petitioner has filed an application in I.A.No.355 of 2016 to condone the delay of 1321 days in filing the appeal suit. The said application is still pending before the appellate Court. When the said application is pending, the first respondent filed E.P.No.86 of 2015 seeking an order of arrest against the petitioner. In the aforesaid E.P, the first respondent also filed E.A.No.71 of 2016 under Section 151 of C.P.C for police protection to execute the decree passed by the trial Court.

5. The contention of the Petitioner is that when the application is pending before the appellate Court, passing of an order in the aforesaid E.A will prejudice the right of the Petitioner in the main appeal suit. The said contention of the Petitioner cannot be accepted at this stage for the reason that the Petitioner had already filed an application to condone the delay in the aforesaid appeal suit. Therefore the Petitioner has to get the remedy before the appellate Court. In spite of that, the petitioner has filed the present Civil Revision Petition for getting appropriate orders, is not maintainable, under Article 227 of the Constitution of India.

6. During the course of arguments, the learned counsel for the Petitioner requested this Court to give appropriate direction to the appellate Court to dispose of the application filed by the Petitioner in I.A.No.355 of 2016 in the aforesaid appeal suit. He would further submit that the respondent has also filed counter affidavit in the aforesaid application. The said submission of the Petitioner is an acceptable one and the same has to be considered in the Civil Revision Petition.

7. Considering the above submission made by the learned counsel for the Petitioner and in the interest of justice, this Court is inclined to pass the following order:

The Sub-Court, Thoothukudi is directed to consider the application filed by the Petitioner in I.A.No.355 of 2016 in A.S.....No.2015 and pass orders on merits and in accordance with law, as early as possible. The above said order passed by the appellate Court will not prejudice the rights of the parties concerned.

8. With the above observations and directions, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

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