

Munuswami Vs. Mallika

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Court : Chennai

Decided On : Sep-12-1980

Reported in : (1981)1MLJ196

Appellant : Munuswami

Respondent : Mallika

Judgement :

ORDER

M.M. Ismail, C.J.

1. This is a petition to revise the order of the Registrar of the Court of Small Causes, Madras dated 4th August, 1980, dismissing M.P. No. 218 of 1980 filed by the Petitioner herein. The petitioner was directed to be evicted in a suit filed under Section 41 of the Presidency Small Cause Courts Act, 1882. Subsequently, the petitioner filed a comprehensive suit, namely O.S. No. 11069 of 1978 on the file of the City Civil Court, Madras for declaration of his right and also filed I.A. No. 1207 of 1980 for an interim order of injunction and the said suit and the application are said to be pending. It is at that stage the petitioner filed the present petition, namely M.P. No. 218 of 1980 before the Court of Small Causes, Madras for stay of all further proceedings by way of executing the order of eviction passed in the ejectment suit. The Registrar, Court of Small Causes dismissed the said petition holding that having filed a comprehensive suit, the remedy of the petitioner would be to apply for necessary orders in the injunction application in the comprehensive

suit filed by him in the City Civil Court, Madras and that the proceedings in execution of the order passed in the ejectment suit could not be indefinitely stayed. It is that order that is sought to be revised in the present civil revision petition.

2. The learned Counsel for the petitioner strenuously relied on Section 47 of the Presidency Small Cause Courts Act, 1882 and also the decisions of this Court in *A. S. Krishna Aiyar v. N. Subramania Aiyar* (1923) 44 M.L.J. 386 : : (1923)44MLJ386 : 17 LW 1791 AIR 1923 Mad 323 and *Sree Sidhi Budhi Vinayakar Shree Sundareswarar Devasthanam v. S.V. Marimuthu* : AIR1963 Mad369 to the effect that Section 47 is mandatory and the Small Cause Court is bound to stay the proceedings. I am unable to accept this argument because Section 47 has no application to the facts of the present case. Section 47 of the Presidency Small Cause Courts Act, contemplates the occupant filling an application for staying the proceedings initiated under Section 41 of the Act undertaking to file a separate and comprehensive suit and it has no application to a case where such a suit has already been filed and the occupant has the opportunity of obtaining interim orders pending that suit. As T pointed out already, in this case, a suit has already been filed and the application for interim injunction also is pending. Section 47 of the Act is intended to cover the interregnum between the proceedings under Section 41 of the Act and the institution of a comprehensive regular suit, so that, during the interregnum, an occupant may not be subjected to undue hardship by getting an opportunity to have the proceedings under Section 41 stayed on his under-taking to institute a suit. Section 47 has no application to a case where a suit has already been instituted and the plaintiff therein has every opportunity of obtaining necessary interim orders in that suit. Hence the civil revision petition is dismissed.