

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, MAYILADUTHURAI.

Present: Thiru P.Elango, B.Sc., M.L.,
Additional District Judge
Tuesday, the 31st day of January 2023
I.A. No.1/2022 in A.S. No.12/2022

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Sathiyamurthy . . . Petitioner / Appellant

Vs

Rajasekar . . . Respondent / Respondent

This petition is coming up before me on 10.01.2023 in the presence of Tr. S. Balachandran advocate for the petitioner / appellant and Tmt. C. Latha, advocate for the respondent and upon hearing both side and considering the connected records, this Court made the following

ORDER

This petition is filed under O41 R5 CPC seeking stay of decree dated 30.11.2021 in O.S. No.37/2014 till the disposal of this appeal.

1. The averments of petition affidavit in short:

The petitioner is the appellant in the main appeal. The respondent filed the main suit to recover money on the basis of promissory note. The promissory note itself came into existence as the balance of purchased money in transaction of sale wherein vendor burgled one of the claimant and tried to grab the entire sale proceeds. The mediator advised to withhold Rs.1- lakh in case the claimant appeared and instituted any litigation regarding the sale. Accordingly the claimant filed the partition suit in O.S. No.54/2014 which was tried along with promissory note suit. Therefore the mediator correct in withholding the amount. The appellant as purchaser need not be pay any interest and the promissory note itself there is a contract to pay interest. But the trial Court awarded the interest of rupees 6% per annum from the date of filing as balance of purchase money. The petitioner need not pay any interest hence the petitioner filed this appeal against

the decree and judgment of trial Court. Mean while the decree holder make arrangements to file execution application to collect money. Therefore the petitioner prays to stay all further proceedings on the decree dated 30.11.2021 in O.S. No.37/2014 on the file of Additional Sub Court, Mayiladuthurai till the disposal of this appeal.

2. The averments of counter in short:

The averments of petition is not sustainable either in law or fact. The petitioner has to prove the same. The petitioner was bound to pay the decree amount as per law and fact. The petitioner failed to pay the loan obtained in the year of 2011 by stating one or other reasons. The petitioner bound to deposit the decree amount with interest and cost into the Court. Therefore the respondent prays to dismiss the petition with cost.

3. The points for determination is:

Whether the petitioner is entitle for the prayer as sought for?

4. Solution:

According to the petitioner side the money claim was decreed in favour of respondent / plaintiff in O.S. No.37/2014 on the file of Additional Sub Court, Mayiladuthurai and the decree and judgment of the trial Court is not sustainable and there a is fair chance of success in the appeal in favour of petitioner. Therefore the petitioner prays to stay further proceedings on the basis of decree dated 30.11.2021 till the disposal of this appeal. In this situation the respondent side contend that the petitioner failed to repay the loan obtained in the year of 2011 by stating one or other reasons and the petitioner is bound to deposit the decree amount with interest and cost into the Court as prayed by petitioner side. If the respondent / decree holder started execution of decree passed in his favour prior to the disposal of this appeal it will cause prejudice to the petitioner / defendant. Even though the respondent side prays for deposit of decree amount

into Court, it is decided to order stay of proceedings on the basis of decree passed in O.S. No.37/2014 till the disposal of this appeal.

In result this application is allowed by staying all proceedings on the basis of decree dated 30.11.2021 in O.S. No.37/2014 on the file of Additional Sub Judge, Mayiladuthurai till the disposal of this appeal. No cost.

Dictated to the steno-typist, transcribed and computer typed by her and corrected and pronounced by me in the open Court today this 31st day of January 2023.

Additional District Judge,
Mayiladuthurai.

Order: (Fair & Draft)
I.A. No.1/2022 in
A.S. No.12/2022
Dated: 31.01.2023