



C.R.P.(MD) No.2011 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2011 of 2023

S.Karunakaran

... Petitioner

Vs.

1.Ravishankar

2.The Sub Registrar,
Sub Registrar Office,
Paramakudi,
Sivagangai District.

... Respondents

Prayer:- This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 07.06.2023 made in E.A.No.1 of 2023 in E.P.No.32 of 2006 in O.S.No.106 of 2003 on the file of the learned Subordinate Judge, Maanamadurai, Sivagangai District.

For Petitioner : Mr.S.Saravana Kumar

For R1 : No appearance

For R2 : Mr.G.Suriyananth
Additional Government Pleader



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ORDER

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This Civil Revision Petition has been filed by the petitioner against the order dated 07.06.2023 made in E.A.No.1 of 2023 in E.P.No.32 of 2006 in O.S.No.106 of 2003 on the file of the learned Subordinate Judge, Maanamadurai, Sivagangai District.

2. According to the revision petitioner/defendant the suit in O.S.no.106 of 2003 was filed by the first respondent/plaintiff for the relief of recovery of money and the same was decreed in favour of the first respondent/plaintiff. Thereafter, the first respondent/plaintiff has filed E.P.No.32 of 2006 for execution of the decree, in which an attachment order was passed against the petitioner/defendant.

3. The learned counsel appearing for the petitioner/defendant would submit that the entire decretal amount was settled in favour of the decree holder/plaintiff and thereafter, the decree holder/plaintiff failed to pursue with the execution petition and the Executing Court had dismissed the above execution petition for default on 02.01.2017. Thereafter, the revision petitioner/defendant has filed an application under Order XXI Rule 57 of the Code of Civil Procedure raising attachment, since no execution petition was



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pending. Further, the trial Court had rejected the said petition by stating that no satisfaction of decree is certified by the Court. The contention of the learned counsel for the revision petitioner/defendant is that since the entire amount has been settled to the decree holder/plaintiff, he had not persuaded with the execution petition and the above fact was not considered by the Executing Court, which has dismissed the application erroneously filed by the petitioner under Order XXI Rule 57 of the Code of Civil Procedure.

4.The revision petitioner/judgment debtor/defendant has filed a memo before the Executing Court stating that a sum of Rs.1,55,000/- was paid to the first respondent/decreed holder as agreed by them out of Court settlement. The said fact was not considered by the trial Court and in spite of that, the petition was dismissed by stating that no satisfaction of decree is certified by the Court. In spite of notice served to the first respondent/decreed holder in E.P.No. 32 of 2006, he failed to appear. Therefore, it is understood that since the first respondent/decreed holder has received the amount as per the compromise, he was not interested in pursuing the decree passed in favour of him. The Executing Court ought to have considered all these facts. Though it is contemplated under Order XXI Rule 57 of the Code of Civil Procedure that the attachment can be raised only after satisfaction of the decree, it is not



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mandatory that the same has to be recorded by the Court. Moreover, the decree holder/plaintiff himself had not shown any interest in pursuing the decree passed in his favour. Therefore, the order passed by the trial Court dated 07.06.2023 in E.A.No.1 of 2023 in E.P.No.32 of 2006 in O.S.No.106 of 2003 is hereby set aside. Attachment raised. The Executing Court is directed to send a communication to the second respondent/the Sub Registrar to record the same.

5.Accordingly, this Civil Revision Petition is allowed. No costs.

04.09.2023

Internet : Yes/No

NCC : Yes/No

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Note : Issue order copy on 14.09.2023

To

The Subordinate Judge,
Maanamadurai, Sivagangai District.



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K.GOVINDARAJAN THILAKAVADI, J.

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