

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.50 of 2023

Tata Classedge

..... Petitioner(s);

Versus

Grace English School

.....Respondent(s)

For Petitioner(s) : Mr. S.S. Debnath, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/01/2024

Heard Mr. S.S. Debnath, learned counsel for the petitioner.

Respondent has not entered appearance despite valid service of notice.

2. It appears from the order dated 03.06.2023 passed by learned Executing Court of Civil Judge (Sr. Divn), North Tripura, Dharmanagar that the judgment-debtor/respondent herein had neither appeared nor filed written objection in the Ex (M) No.03/2023. The decree dated 14.06.2022 in Short Cause Suit No.843/2016 was transferred by the Court of learned City Civil Court, Borivali Division at Goregaon, Dindoshi, at Mumbai to the Court of Civil Judge (Sr. Divn), North Tripura, Dharmanagar and was registered as Ex (M) No.03/2023. Petitioner thereafter, being the decree holder, sought execution of the decree after service of notice upon the judgment-debtor, who failed to appear and file any written objection as evident from the order dated 03.06.2023 passed by the learned Executing Court. On 17.06.2023, the execution case was dismissed on the ground that the application under Order XXI Rule 10 & 11 of CPC was notarized before the Notary Public, Dharmanagar Bar Association and not presented before the Sheristadar of the

Court who is the proper officer. Furthermore no authorization letter had been submitted by Sri Kishore Bhattacharjee, who was the authorized agent of the decree-holder. The learned Court was of the opinion that the application filed under Order XXI Rule 10 & 11 of CPC is not proper, and hence the execution proceeding was dismissed without contest.

3. Mr. S.S. Debnath, learned counsel for the petitioner, submits that no such defect was pointed out by the learned Executing Court at the time of issuance of notice upon the judgment-debtor, nor was any time allowed to remedy the defect as regards compliance of the provisions of Rule 11 of Order XXI. It is submitted that the finding regarding absence of authorization of Sri Kishore Bhattacharjee, the authorized agent of the decree-holder, is also not correct as the authorization was very much on the record as would be evident from the copy of the authorization letter dated 23.01.2023 [Page 31 of the revision petition], copy of which was obtained from the office of the Chief Examiner, District & Sessions Judge, North Tripura Judicial District, Dharmanagar, Tripura. As such, an executable decree has been dismissed on non est ground. Petitioner has got a judgment and decree in his favour with a direction to the defendant to pay a sum of Rs.4,38,887/- with 9% interest per annum from the date of suit till realization of the entire amount.

4. I have considered the submission of learned counsel for the petitioner and have taken of the limited grounds raised by the petitioner to question the impugned order dated 17.06.2023 whereby Ex (M) No.03/2023 has been dismissed by the learned Court. Reference is made to the provisions under Order XXI Rule 17(1) which provides that in case the requirement of

Rule 11 to 14 has not been complied with by the decree-holder while filing an application for execution of the decree, the Court shall allow the defect to be remedied then and there or within a time to be fixed by it. Rule 17 sub-rule (1-A) provides that if the defect is not so remedied, the Court shall reject the application.

5. The defect regarding notarization of the execution petition before Notary Public, Dharmanagar Bar Association was a curable defect which could have been remedied, if time was granted for the petitioner to present it before the proper officer of the Court i.e. the Sheristadar. It further appears that the observation of the Court that no authorization letter has been submitted by Sri Kishore Bhattacharjee, who is the authorized agent of the decree-holder, is also not borne from the records, as the authorization letter in favour of Sri Kishore Bhattacharjee by the petitioner dated 23.01.2023 was available on the record and a copy thereof has been obtained from the office of the Chief Examiner, Office of the District & Sessions Judge, North Tripura Judicial District, Dharmanagar, Tripura. Furthermore, it appears that though the judgment-debtor had not appeared and filed any written objection upon service of notice as taken note of in the order dated 03.06.2023, the learned Court in the order dated 17.06.2023 seems to have inadvertently recorded that it has heard both the sides, whereas it has also indicated that there is no step on behalf of the judgment-debtor.

6. For all these reasons, the impugned order cannot be sustained as it amounts to failure to exercise jurisdiction vested in the Court and non-application of mind. As such, the impugned order is set aside. The learned

Executing Court should allow reasonable time to the petitioner to remedy the defect, if any relating to the presentation of the execution petition and any other defect if found on fresh reporting.

7. The revision petition is allowed and accordingly disposed of.

(APARESH KUMAR SINGH), CJ

