



C.R.P.(MD)No.3255 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3255 of 2023

and

C.M.P.(MD)No.16818 of 2023

Mariswari

... Revision
Petitioner

Vs.

1. Prithiviraj

2. Child Development and Project Officer,
Thirumangalam,
Madurai District.

... Respondents

Prayer : This Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the executable order and fair order dated 27.06.2023 made in E.P.No.20 of 2022 in O.S.No.259 of 2020 on the file of the learned Sub Court, Thirumangalam, Madurai District by allowing this Civil Revision Petition.



C.R.P.(MD)No.3255 of 2023

For Petitioner : Mr.M.Suresh
For R1 : Mr.K.P.S.Ilangovel Rajan
For R2 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.20 of 2022 in O.S.No.259 of 2020 dated 27.06.2023 on the file of the Subordinate Court, Thirumangalam, attaching salary of the revision petitioner/judgment debtor.

2. The first respondent/decree holder as plaintiff has filed the above suit for recovery of money due on the promissory note. After trial, the suit was decreed vide judgment dated 25.03.2022 directing the revision petitioner/judgment debtor to pay a sum of Rs.2,68,933/- (Rupees Two Lakhs Sixty Eight Thousand Nine Hundred and Thirty Three only) with interest at 9% per annum for the principal amount of Rs.2,00,000/- (Rupees Two Lakhs only) from the date of plaint till the decree and at 6% per annum from the date of decree till the realization and to pay the cost of Rs.13,320/- (Rupees Thirteen Thousand Three Hundred and Twenty only)



C.R.P.(MD)No.3255 of 2023

WEB COPY

to the first respondent/decree holder. Since the revision petitioner/judgment debtor has not complied with the decree, the first respondent/decree holder has laid the execution in E.P.No.20 of 2022 seeking attachment of salary of the revision petitioner/judgment debtor. The revision petitioner/judgment debtor has filed her counter statement raising objections. The learned Subordinate Judge, after enquiry, has passed the impugned order dated 27.06.2023 attaching salary to the tune of Rs.8,000/- (Rupees Eight Thousand only) from the revision petitioner/judgment debtor's salary for 24 months. Aggrieved by the impugned order, the judgment debtor has preferred the present revision.

3. The defence of the revision petitioner/judgment debtor is that the revision petitioner/judgment debtor has already filed an appeal challenging the judgment and decree passed in O.S.No.259 of 2020 dated 25.03.2022 along with an application to condone the delay in filing the appeal and is pending in I.A.No.2409 of 2022 and that therefore, the execution proceedings cannot be proceeded.

4. As rightly contended by the learned counsel appearing for the first respondent/decree holder, as of now, there is no appeal challenging



C.R.P.(MD)No.3255 of 2023

the judgment and decree passed in O.S.No.259 of 2020 pending and even according to the revision petitioner/judgment debtor, her application to condone the delay in filing the appeal in I.A.No.2409 of 2022 is pending.

5. As rightly observed by the Executing Court, the revision petitioner/judgment debtor has not obtained any order staying the operation of the judgment and decree passed in O.S.No.259 of 2020. Even assuming for arguments sake that appeal itself is pending, in the absence of any order staying the operation of the decree, there is absolutely no bar or prohibition for proceeding with the execution proceedings. Hence, the above objection of the revision petitioner/judgment debtor, which is devoid of substance, is liable to be rejected.

6. The next contention of the revision petitioner/judgment debtor is that though she has been working as an Anganwadi Helper for the Integrated Child Development Service Scheme, she is getting lesser salary after deduction for the loan already obtained, that the amount shown by the first respondent/decreed holder, in the affidavit filed in support of the execution petition, is not correct and she is not getting any salary as



C.R.P.(MD)No.3255 of 2023

claimed by the first respondent/deGREE holder and that therefore, the order of Executing Court attaching Rs.8,000/- (Rupees Eight Thousand only) per month is legally unsustainable.

7. The first respondent/deGREE holder, in the affidavit filed in support of the execution petition, has alleged that the revision petitioner/judgment debtor has been receiving Rs.25,000/- (Rupees Twenty Five Thousand only) as monthly salary and after taking note of the deductions to be made has claimed attachment of Rs.8,000/- (Rupees Eight Thousand only) from the salary of the revision petitioner/judgment debtor and the Executing Court has granted the relief claimed by the first respondent/deGREE holder. Though the revision petitioner/judgment debtor has taken such a defence before the Executing Court, the Executing Court, by observing that the revision petitioner/judgment debtor has not produced any records to show her salary, rejected her objection and allowed the claim of the first respondent/deGREE holder. The learned counsel appearing for the revision petitioner/judgment debtor has produced the copy of the statement of the regular salary for August 2023 in respect of the revision petitioner/judgment debtor and wherein, it has been shown that gross salary was at



C.R.P.(MD)No.3255 of 2023

Rs.7,428/- (Rupees Seven Thousand Four Hundred and Twenty Eight only) and after deductions, net salary was at Rs.5,348/- (Rupees Five Thousand Three Hundred and Forty Eight only). No doubt, as rightly contended by the learned counsel appearing for the first respondent/decreed holder, all the deductions cannot be taken into account, but only the statutory deduction.

8. The learned Additional Government Pleader appearing for the second respondent/garnishee would submit that since the second respondent/garnishee despite the receipt of notice has not turned up, he was set *ex parte* and would submit that the revision petitioner/judgment debtor is not getting the salary as claimed by the first respondent/decreed holder. Admittedly, neither the revision petitioner/judgment debtor nor the second respondent/garnishee has chosen to produce the salary certificate or statement of salary before the Executing Court. But as rightly contended by the learned counsel appearing for the revision petitioner/judgment debtor, the Executing Court, in the absence of any evidence to show the salary of the revision petitioner/judgment debtor, by taking the version of the first respondent/decreed holder as facts and truth, has



C.R.P.(MD)No.3255 of 2023

proceeded to pass the impugned order attaching Rs.8,000/- (Rupees Eight Thousand only) per month from her salary.

9. As already pointed out, as per the copy of the statement of the regular salary for August 2023 produced by the revision petitioner/judgment debtor, she was receiving only Rs.7,428/- (Rupees Seven Thousand Four Hundred and Twenty Eight only) as gross salary. Since a copy of the statement alone was produced at the hearing, this Court cannot fix the amount to be attached, but at the same time, there is a *prima facie* proof from the said statement that the revision petitioner/judgment debtor is not getting the salary of Rs.25,000/- (Rupees Twenty Five Thousand only) as claimed. Considering the above, this Court decides that the impugned order attaching sum of Rs.8,000/- (Rupees Eight Thousand only) per month from the salary of the revision petitioner/judgment debtor is not proper and is not in accordance with law and the same is liable to be set aside. But at the same time, the case is remitted back to the Executing Court for giving opportunity to both the parties to adduce their side evidence and thereafter to pass orders on merits and in accordance with law.



C.R.P.(MD)No.3255 of 2023

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10. In the result, this Civil Revision Petition is allowed and the impugned order passed in E.P.No.20 of 2022 in O.S.No.259 of 2020 dated 27.06.2023 is set aside. The Executing Court is directed to restore the execution petition in E.P.No.20 of 2022 to its file and permit both the parties to adduce their side evidence and thereafter to pass orders on merits and in accordance with law. The Executing Court is further directed to conduct enquiry and pass orders within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

02.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



C.R.P.(MD)No.3255 of 2023

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1. The Subordinate Court,
Thirumangalam.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.3255 of 2023

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.3255 of 2023
and
C.M.P.(MD)No.16818 of 2023

Dated : 02.02.2024