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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 5/2/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.2429 of 2014

M. Swaminathan ... Petitioner

Vs

Muthukaruppan ... Respondent

Petition filed under Section 115 of Civil Procedure Code, 1908 against the ex-order and fair dated 19/7/2013 made in E.A.No.64/2011 in E.P.No.48 of 2004 in O.S.No.107 of 2001 on the file of the Sub-Judge, Sivagangai with regard to the future interest fixed at 24% p.a.

For petitioner ... Mr.R.Suriyanarayanan

For respondent ... Mr.G.Sridharan

O R D E R

This Civil Revision Petition is directed against the order dismissing an application under Section 47 of the Code of Civil Procedure filed by the defendant.

2. The plaintiff had filed a suit for recovery of money based on a promissory notes in O.S.No.107 of 2001 on the file of the Sub-Court, Sivagangai. The petitioner herein who was the defendant remained ex parte and an ex parte order was passed on 10/11/2002 directing the defendant to pay a sum of Rs.1,50,000/- with future interest at 24% p.a. Aggrieved by the award of the interest rate at 24% p.a., the defendant had filed an application in E.A.No.64 of 2011 under Section 47 of the Code of Civil Procedure.

3. It is contended by the defendant that the decree passed in O.S. is inexecutable, so far as the interest is concerned. According to the counsel, as per Section 34 of the Code of Civil Procedure, after filing of the suit, the Court has no power or jurisdiction to order the future interest exceeding 6% p.a., unless and until it had arisen from a commercial transaction. Though the said transaction is based on a promissory note, the same has been borrowed by the defendant for the purpose of rice mill and he had agreed to pay interest at 24% p.a.

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4. The said application was resisted by the plaintiff/decreed holder contending that the defendant/revision petitioner had remained ex parte



in the suit and thereafter, also had not filed any appeal against the judgment. Therefore, the revision petitioner cannot maintain the application asking the Executing Court to go beyond the decree. The said application came to be dismissed by the Sub-Court, Sivaganga on the ground that when the decree has not been challenged, the Executing Court cannot go beyond the decree.

5. The learned counsel for the revision petitioner contended that as per Section 34 of the Code of Civil Procedure, the decree is a nullity. Admittedly, the revision petitioner remained ex parte in the suit and also had not challenged the decree by way of an appeal.

6. It is the established proposition that the duty of the Executing Court is to execute the decree as it stands and it cannot go into the correctness or the validity of the decree, except when the decree is a nullity. If the decree is of the Court which lacks inherent jurisdiction, the Executing Court cannot execute the same. While so, the question as to the validity of the decree is not the one which can be agitated in execution because such question does not relate to the discharge or the satisfaction of the decree. It is only where the decree is passed by the Court which lacks inherent jurisdiction to pass the decree, the objection and the validity of the decree may be raised in an execution proceeding.

7. The relief which the revision petitioner is substantially asking is that the decree must be modified as to make it ineffective or inoperative in respect of the question of interest. In other words, in so far as the interest is concerned, according to the petitioner, Section 34 of the Code of Civil Procedure is applicable and award of 24% interest by the trial Court is patently erroneous. Such a contention cannot be sustained in execution proceedings when it is open to the defendant to file an appeal and challenge the same. Having failed to file an appeal, the question of interest cannot be sought to be modified in a proceeding in execution.

8. The Supreme Court, while dealing with the nature of objection which can be taken into the validity of the decree in an execution proceeding has observed as follows in AIR 1970 SUPREME COURT - 1475 {VASUDEV DHANJIBHAI MODI Vs. RAJABHAI ABDUL REHMAN AND OTHERS}.

"Where a decree for ejectment of a lessee is passed by a Court of Small Causes without any objection to its jurisdiction and the question of jurisdiction of that Court to entertain the suit depends upon interpretation of the terms of agreement of lease and the user to which the land was put at the date of grant of lease, these questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed it."

9. In view of the above, the objections raised under Section 47 of the Code of Civil Procedure are frivolous and the same is rightly rejected by the Executing Court. Hence, I find no material irregularity in the said order warranting interference of this Court.



10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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Sd/-
Assistant Registrar (Per.Admn)

/True Copy/

Sub- Assistant Registrar

To

1. The Sub-Judge, Sivagangai.
2. The Section officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

mvs.
C.R.P.NPD (MD) No.2429 of 2014
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