

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.109 of 2012
and
M.P.No.1 of 2012**

E.Bhavani Shankar

.. Petitioner

Vs.

V.Chandrasekaran

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the attachment order of moveables in E.P.No.1623 of 2011 in O.S.No.13456 of 2009, on the file of the IX Assistant Judge, City Civil Court, Chennai, dated 29.11.2011.

For Petitioner : No Appearance

For Respondent : Mr.R.Selvakumar

ORDER

This civil revision is filed by the judgment debtor / defendant in E.P.No.1623 of 2011 in O.S.No.13456 of 2009 on the file of the IX Assistant Judge, City Civil Court at Chennai.

2.The short facts of the case runs as follows:

The respondent herein as plaintiff filed a suit in O.S.No.13456 of 2009 against the revision petitioner for recovery of money before the XVIII Assistant Judge, City Civil Court at Chennai. An ex-parte decree came to be passed against the revision petitioner on 07.07.2010. To set aside the ex-parte decree, the revision petitioner filed application under Order 9, Rule 13 on 19.07.2010. In the mean time, the respondent herein/ decree holder filed E.P.No.1623 of 2011 before the IX Assistant judge, City Civil Court at Chennai to attach the movables of the revision petitioner. The revision petitioner was served with notice in the execution petition. When the above execution petition was posted for hearing, the revision petitioner has not filed counter on that date and filed adjournment petition under Order 17, Rule 1 CPC seeking for time to file counter. The Learned Judge was refused to grant time and the petitioner herein was set ex-parte and ordered to attach the movables of judgment debtor. As against the order of attachment the revision petitioner come up with the present civil revision petition under Article 227 of Constitution of India.

3.I heard Mr.R.Selvakumar, learned counsel appearing for the

respondent. No representation on behalf of the petitioner.

4.A perusal of the impugned order discloses that the adjournment petition filed by the revision petitioner came to be rejected and attachment of the movables of the revision petitioner was ordered. As per as the adjournment petition is concerned, the opinion of this court is that the Learned Judge should have given one more opportunity to the petitioner herein / judgment debtor to settle the decree amount or to file a counter to the execution petition. In this context it is useful to refer the Judgment of the Hon'ble Apex Court reported in 2011 (9) SCC 678 [Shiv Cotex Vs. Tirgun Auto Plast Private Limited and others]

"16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order 17 Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 CPC should be maintained.

When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Rule 1 of Order 17 CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive."

5. It is well settled that adjournment should not be granted without a valid reason. In the present case, the revision petitioner took only one adjournment. Therefore it is a fit case to give one more opportunities to the revision petitioner. By relying upon the ration laid down by the Hon'ble Apex court in the above referred judgment, the court may grant more than three adjournments to a party. In this case, as stated supra, it seems that the revision petitioner filed only one adjournment petition and the same could have been entertained

by the lower even by imposing some cost.

6.To meet the ends of justice this civil revision petition could be allowed. However, with a direction to the revision petitioner to deposit a reasonable amount to the credit of the execution petition. The revision petitioner should not adopt delaying tactics without paying the decree amount and for that he shall deposit a sum of Rs.25,000/- to the credit of execution petition.

7.In the result:

(a) this civil revision petition is allowed by setting aside the order in E.P.No.1623 of 2009, dated 29.11.2011, on the file of IX Assistant Judge, City Civil Court, Chennai, on condition that this petitioner/ Judgment debtor should deposit a sum of Rs.25,000/- in the account of E.P.No.1623 of 2011 in O.S.NO.13456 of 2009, on the file of IX Assistant Judge, City Civil Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(b) the Learned Execution Court, namely the IX

Assistant Judge, City Civil Court, Chennai, is hereby directed to dispose of E.P.No.1623 of 2011 in O.S.No.13456 of 2009, within a period of two months by giving opportunity to both parties and the both parties are hereby directed to give fullest cooperation for early disposal of the E.P. With the above observation this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

25.11.2016

Note:Issue order copy on 27.04.2017

Internet:Yes

Index:Yes

vs

To

The IX Assistant Judge,
City Civil Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.109 of 2012
and
M.P.No.1 of 2012**

25.11.2016

<http://www.judis.nic.in>