

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HON 'BLE **Dr.JUSTICE S.VIMALA**

CRP (NPD) Nos.1382 & 1383 of 2016
and CMP.Nos.7689 & 7690 of 2016

1.M.Venkatesan
2.Kalaiarasi

.. Petitioners in both CRPs /
Judgment-Debtors

Vs

M/s.Attur Thulluvavellar Sangam
Chit Funds (P) Ltd.,
Attur,
Rep. by its Foreman K.Rajan
Office at Attur Thulluvavellalar Sangam (P) Ltd.,
No.40, Narayanasamy Street,
Attur Town & Post,
Salem District.

.. Respondent in both CRPs
/ Decree Holder

Prayer in CRP(NPD) No.1382 of 2015 :- Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order 19.02.2016 passed in R.E.A.No.53 of 2015 in R.E.P.No.19 of 2011 in A.O.P.No.74 of 2010 on the file of the learned Sub Court, Attur, Salem District, and consequently allow the above Civil Revision Petition.

Prayer in CRP(NPD) No.1383 of 2015 :- Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order 19.02.2016 passed in R.E.A.No.190 of 2015 in R.E.A.No.53 of 2015 in R.E.P.No.19 of 2011 in A.O.P.No.74 of 2010 on the file of the learned Sub Court, Attur, Salem District, and consequently allow the above Civil Revision Petition.

For Petitioner in both the petitions :Mr.R.Vasudevan

COMMON ORDER

The judgment-debtors are the Revision Petitioners herein. They are the petitioners in R.E.A.No.53 of 2015 in REP No.19 of 2011, having filed the petition under Order 21 Rule 26 CPC and Section 151 CPC, praying that the entire Execution Proceedings should be stayed till the petitioners obtaining the Certified Copy of the Arbitration Award before the Deputy Registrar of Cooperative Societies, Salem, and that they have filed an application to set-aside the exparte award. Conditional order was passed in that Application. The Executing Court directed the judgment-debtors to deposit a sum of Rs.2,00,000/-, as security, for payment on or before 18.03.2016, failing which, the petition was ordered to be dismissed. As the conditional order was not complied with, the petition in R.E.A.No.53 of 2015 was dismissed. Challenging the same, Civil Revision Petition No.1382 of 2016 is filed.

2. The judgment-debtors also filed an application in REA No.190 of 2015 under Order 13 Rule 10 read with Civil Rules of Practice, 1975, seeking direction to the Court to call for the records pertaining to AOP No.74 of 2010.

2.1. This Application came to be dismissed by the order, dated 19.02.2016, and that is under challenge in CRP No.1383 of 2016.

3. As the common question of law and fact arises in both the Civil Revision Petitions, they are disposed of by the common order.

4. A perusal of the order passed in REA No.53 of 2015 would reveal the following facts:-

(a) The decree against the judgment-debtors was passed on 07.10.2010.

(b) In pursuance of the decree, Execution Petition has been filed in REP No.19 of 2011.

(c) The appeal should have been filed within a period of two months, i.e., from the date of Award, namely from 07.10.2010 and the contention that copy of the award has been applied for after five years of the decree cannot be accepted.

(d) The Judgment-debtors had made payments before attachment of property on various dates to the extent of Rs.6,000/-.

(e) The property has been attached during execution.

5. Under such circumstances, the Executing Court has directed the judgment-debtors to deposit a sum of Rs.2,00,000/- on or before 18.03.2016. As the order is not complied with, the stay petition has been dismissed.

6. The learned counsel for the Revision Petitioners submitted that the entire amount of decree is only Rs.2,00,000/- and the Executing Court is not justified in directing the judgment-debtors to deposit the entire

amount. It is contended that there is justifiable grounds to get the exparte award set-aside and the Executing Court should have granted time to enable the judgment-debtors to take steps either to file an appeal or to take any other steps to get the Award set-aside.

7. This contention cannot be accepted, as it is raised nearly after 5 to 6 years of the award. Therefore, there is no necessity at all to stay the proceedings. When this view was expressed by this Court, the learned counsel for the Revision Petitioners sought time for payment of the decree amount.

8. It is submitted by the learned counsel for the Revision Petitioners that the amount of interest calculated by the decree-holder is on the higher side and the rate of interest must be worked out at a lower rate and in that event, if time is granted, the judgment-debtors would make the payment.

9. Having regard to the nature of relief claimed, the order in these Civil Revision Petitions is passed without issuing notice to the respondent / decree-holder. Therefore, this Court is not in a position to consider the request for reduction on rate of interest. However, it is open to the parties to negotiate on the rate of interest, as normally the rate of interest, after decree, is only 6% per annum.

10. The judgment-debtors are granted six months time for payment of the entire award amount, along with agreed rate of interest. On such payment, the order of attachment shall stand revoked.

11. Civil Revision Petition No.1382 of 2016 is disposed of accordingly.

12. So far as CRP No.1383 of 2016 is concerned, there is an observation by the Executing Court that the Application in REA No.190 of 2015 to examine witness and call for records is filed only with a view to protract the Execution Proceedings.

12.1. The Application in REA No.190 of 2015 has been filed seeking assistance of the Executing Court to call for the emergent copy application moved by the Judgment-Debtors before the Arbitrator and to call for the connected records. The contention before the Executing Court is that the exparte award has been obtained by the decree-holder, by suppressing material facts and therefore, the judgment-debtors wanted to take steps to set-aside the exparte award.

12.2. That step should be taken only before the Arbitrator and not before the Executing Court. The Executing Court is not expected to go beyond the terms of the decree.

12.3. It is alleged that the arbitrator did not provide the copy of the award as demanded by the judgment-debtors. Even assuming that the Arbitrator provides the copy, that is immaterial because, there is a finding

that those documents are not essential for the purpose of deciding any issue in the Execution Proceedings.

12.4. Admittedly, no appeal has been filed as against the award passed and the award has become final. The appeal should have been filed within a period of 60 days from the date of award, but the five years period is already over. Under such circumstances, the application to send for the document is devoid of merits and it has been rightly held so by the Court below.

13. Therefore, order 19.02.2016 passed in R.E.A.No.190 of 2015 in R.E.A.No.53 of 2015 in R.E.P.No.19 of 2011 in A.O.P.No.74 of 2010 on the file of the learned Sub Court, Attur, Salem District, is sustainable and CRP No.1383 of 2016 is dismissed. No costs. Consequently, the connected CMPs are closed.

29.04.2016

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Note to office.: Issue order copy on 29.4.16

To

1. Sub Court, Attur, Salem District

S.VIMALA, J.

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