

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2382 of 2016
and C.M.P.No.12320 of 2016

1.B.S.Ramesh Major

2.N.Venkatesh Major

... Petitioners

Vs.

1.M/s.Shriram City Union Finance Ltd.,
No.123, Angappa Naicken Street,
Chennai - 600 001.

2.S.Ganesan Major

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 23.06.2016 passed in E.P.No.1853 of 2011 in A.C.P.(SCUF-EF)(SSM).No.010 of 2010 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.Veeraraghavan

ORDER

Challenging the fair and final order passed in E.P.No.1853 of 2011 on the file of the IX Assistant Judge, City Civil Court, Chennai, the Judgment Debtors 2 & 3 have filed the above Civil Revision Petition.

2.Pursuant to the decree granted in the Arbitral proceedings, the 1st respondent/Decree Holder filed Execution Petition in E.P.No.1853 of 2011 to attach the salaries of the Judgment Debtors 2 & 3. Simultaneously, the 1st respondent also filed an Execution Petition in E.P.No.1855 of 2011 to attach the properties belonging to the 1st Judgment Debtor.

3.The learned counsel appearing for the petitioners submitted that since the Decree Holder failed to appear in E.P.No.1855 of 2011 before the Executing Court, the said Execution Petition was dismissed for non-prosecution. The Executing Court, after taking into consideration the case of both parties, allowed the Execution Petition in E.P.No.1853 of 2011 by attaching the salaries of the Judgment Debtors 2 & 3, after adjusting the amount of Rs.1,25,000/- remitted by the 1st Judgment Debtor in E.P.No.1855 of 2011.

4.The learned counsel appearing for the petitioners submitted that the 1st respondent cannot prosecute two Execution Petitions simultaneously, one against the Judgment Debtors 2 & 3 and the other against the 1st Judgment Debtor.

5.Since the relief sought for in E.P.No.1855 of 2011 was dismissed for

non-prosecution by the Executing Court, the said Execution Petition is not in existence as of today. That apart, when there is a decree as against all the three Judgment Debtors, they are jointly and severally liable to discharge the decree amount. The Judgment Debtors 2 & 3 cannot now take a stand that the Decree Holder can only proceed against the 1st Judgment Debtor, who is the principal borrower and not against the Judgment Debtors 2 & 3. When the Judgment Debtors are jointly and severally liable to pay the decree amount, the contention raised by the learned counsel for the petitioners is liable to be rejected. Accordingly, the same is rejected. That apart, the Executing Court has given credit to the amount paid by the 1st Judgment Debtor and ordered attachment only in respect of the balance amount.

6. In these circumstances, I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

02.08.2016

M.DURAIWAMY,J.
va

To

The IX Assistant City Civil Court,
Chennai.

**C.R.P.(NPD).No.2382 of 2016
and C.M.P.No.12320 of 2016**

02.08.2016