

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Daed: 12.08.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD)No.4111 of 2009
and
M.P.No.1 of 2009

1.M.Ayyanar

2.A.Sundaramurthy

3.M.Mosapillai

4.G.Jothi

5.R.Annadurai

.. Petitioners

Vs

1.The Foreman Jayapriya Chit Funds

(P) Ltd., Neyveli

rep. by the Foreman,

Neyveli, Panrutti Taluk,

Cuddalore District.

2.T.Kandasamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the procedural irregularity committed by the learned Subordinate Judge, at Neyveli while passing the order in E.P.No.121 of 2009 in A.R.No.19 of 2007, dated 17.11.2009.

Petitioner : Mr.K.A.Ramachandran

Respondent: Mr.V.Manisekaran (for R1)

ORDER

The first judgment debtor in EP.No.121 of 2009 in A.R.No.19 of 2007 is the revision petitioner before this Court, challenging the exparte order passed in E.P.No.121 of 2009 in A.R.No.19 of 2007, dated 17.11.2009 on the file of the Subordinate Court, Vridhachalam.

2. The case of the petitioner / first judgment debtor is that originally he joined the chit group for the value of Rs.2,00,000/- payable at the rate of Rs.5,000/- every month for the period of 40 months in the first respondent.

3. The second respondent participated in the auction and became the successful bidder and prized the chit. The second respondent and the petitioners herein have executed necessary documents in favour of the first respondent for the due payment of the future installments since the petitioners stand as sureties for the due repayment of the future subscriptions in the chit amount. The second respondent defaulted in payment of the monthly subscription, who is the principal debtor. Therefore, the first respondent has made

an application for reference of a dispute of Arbitration in A.R.No.19 of 2007 before the Arbitrator of chits, Cuddalore.

4. Pursuant to the application made by the petitioner, the Arbitrator passed an award against the first respondent and the petitioners herein in A.R.No.19 of 2007, but, after passing the award, the second respondent / Principal Debtor has remitted some amount. Pursuance of the order of award passed by the Arbitrator of Chit, Cuddalore, the first respondent has filed E.P.No.121 of 2009 before the Subordinate Court, Neyveli for execution of the decree passed in A.R.No.19 of 2007. Originally, the said E.P. was filed before the Subordinate Court, Virudhachalam. But, due to creation of new Court at Neyveli, Cuddalore District, the E.P. was transferred to Subordinate Court, Neyveli, which was not aware by the petitioner / judgment debtor. Hence, the learned Judge, Neyveli has passed the order of attachment of salary of the petitioners on 17.11.2009 and also directed to issue pro order to attach the salary of the petitioners. Therefore, the petitioners had filed an application before the Execution Court for setting aside the exparte order passed in E.P.No.121 of 2009 dated 17.11.2009 attaching the salary of the petitioners, since the petitioners state that they are only sureties to the second respondent. The petitioners are all sureties and the first

respondent is only principal debtor. Therefore, the petitioners prayed the Court to set aside the exparte order passed in E.P.No.121 of 2009, dated 17.11.2009. Challenging the exparte order, they have filed the present civil revision petition before this Court.

5. While the matter was taken up for admission, this Court by an order dated 22.12.2009, directing the petitioner to deposit a sum of Rs.25,000/- to the credit of E.P.No.121 of 2009 in A.R.No.19 of 2007, on the file of Subordinate Court, Neyveli, within a period of four weeks, failing which, interim stay granted by this Court shall stand automatically vacated without further reference to this Court.

6. Pursuant to the order passed by this Court, the petitioners have also deposited the said amount before the said Court.

7. Heard Mr.K.A.Ramachandran, learned counsel appearing for the petitioner and Mr.V.Manisekaran, learned counsel appearing for the first respondent.

8. Without going into the merits of the case, since it is a case of the petitioners are that they are all sureties in the E.P.No.121 of 2009, without giving any opportunity, the order was passed on

17.11.2009 by the E.P. Court. Therefore, they prayed for one opportunity to explain their situation before the Court.

9. Considering the case of the petitioners and in the interest of justice to give one opportunity to the petitioners to put forth their case before the Executing Court, I am inclined to allow the civil revision petition, on condition that the petitioner should deposit further amount of Rs.25,000/- within a period of four weeks from the date of receipt of a copy of this order, failing which, the civil revision petition dismissed automatically without further reference to this Court.

10. In the result, (a) this civil revision petition is allowed by setting aside the ex parte decree passed in E.P.No.121 of 2009, dated 17.11.2009, on the file of the Subordinate Court, Neyveli, on condition that the petitioner should deposit a sum of Rs.25,000/- in to the credit of E.P.No.121 of 2009 in A.R.No.19 of 2007, on the file of the Subordinate Court, Neyveli, within a period of four weeks from the date of receipt of a copy of this order; (b) the Execution Court namely the Subordinate Court, Neyveli further directed to give opportunity to the petitioners as well as the respondents to put forth their case and pass appropriate orders, within a period of two months

from the date of receipt of a copy of this order.

11. Accordingly, the civil revision petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2016

vs

Note:Issue order copy on 22.11.2016

Index:Yes/No.

Internet:Yes/No

To

The Subordinate Court,
Neyveli.

M.V.MURALIDARAN,J.

vs

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and
M.P.No.1 of 2009

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