

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) Nos.3840 and 3841 of 2007

&

M.P.No.1 of 2007

Vijayakumar

... Petitioner
in both the petitions

Vs.

Padmavathy

... Respondent
in both the petitions

C.R.P. No.3840 of 2007: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 06.11.2007 in E.A.No. 17 of 2007 in E.P.No.2 of 2006 in O.S.No.85 of 2005 on the file of the Principal District Court, Cuddalore.

C.R.P.No.3841 of 2007: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 06.11.2007 in E.A.No. 20 of 2007 in E.P.No.2 of 2006 in O.S.No.85 of 2005 on the file of the Principal District Court, Cuddalore.

For Petitioner : Ms.R.Meenal

For Respondent : Mr.A.Vivek
Mr.T.S.Baskaran for caveator

ORDER

This memorandum of Civil Revisions have been directed against the fair and decretal order dated 06.11.2007 and made in the applications in E.A.Nos.17 and 20 of 2007 in E.P.No.2 of 2006 in O.S.No.85 of 2005 on the file of the Principal District Court, Cuddalore.

2. The respondent herein is the decree holder in the suit in O.S.No.85 of 2005 and on the strength of the decree, which was obtained by her ,she had taken out execution proceedings in E.P.No.2 of 2006 for recovery of money from the revision petitioner, who is the judgment debtor, in which the executing Court had directed the judgment debtor to pay the entire arrears of Rs.5,02,373/- on or before 19.06.2007.

3. Having been aggrieved by the said order, the petitioner herein had filed a Civil Revision Petition in C.R.P.No.1656 of 2007 before this Court to modify the said order. In the said Civil Revision Petition, the respondent/decrece holder had made her appearance and requested this Court to give direction to the Garnishee to retain Rs.5,02,373 from the retirement benefits of the revision petitioner/judgment debtor. The said petition was allowed and accordingly the said amount was retained by the Garnishee and in pursuance to the order of this Court, the respondent therein, being the decree holder, had filed application in E.A.No.17 of 2007 to

direct that the amount of Rs.5,02,373/- be deposited in the name of the judgment debtor and the same be adjusted towards the decree amount. Another application in E.A.No.20 of 2007 was filed by the judgment debtor under Section 47 of the Code of the Civil Procedure to declare that the execution petition in E.P.No.2 of 2006 filed by the decree holder as infructuous as the judgment debtor had retired from service and to determine that the amounts specified in the execution petition cannot be realized in its entirety and that the retirement benefits should not be attached as the prayer of the execution petition is to attach a sum of Rs.4380/- per mensem and determine that the Court cannot attach gratuity, provident fund, leave salary and policy of insurance of life as per Section 61 Clause (g)(k)(ka)(kb)(l)(n) and (o) of the Code of Civil Procedure Code and also to determine that the decree holder shall not be entitled to get a sum of Rs..5,02,373/-, which is lying in the hands of Garnishee. This petition was resisted by the revision petitioner by filing his counter statement and after hearing both sides, the claim petition in E.A.No.17 of 2007 filed by the decree holder was allowed as prayed for whereas the claim petition in E.A.No.20 of 2007 filed by the judgment debtor was dismissed. Against the above said orders, the revision petitioner herein stand before this Court with these revisions to set aside the impugned order.

4. When the matter is taken up for hearing today, the learned counsels appearing on both sides have jointly submitted that the dispute between the

parties to the revisions has been settled and the terms of settlement have also been reduced into writing and to that effect they have jointly filed a memorandum of compromise signed both by the parties as well as their respective counsels. The following terms have been set out in the memorandum of compromise:

i) The respondent is entitled to withdraw a sum of Rs.4,50,000/- from the Bank account and the petitioner has no objection for the same.

ii) The petitioner is entitled to withdraw the balance amount from the Bank Account and the respondent has no objection for the same.

iii) The parties mutually agree to file appropriate application before the Executing Court for withdrawal of the above said sum and also to record full satisfaction of the decree.

iv) The parties have no further claims against each other.

v) The parties shall bear the costs.

5. This Court has considered the submissions made on behalf of both sides as well as the terms of compromise set out in the memorandum of compromise.

6. It is revealed from the records that pending the execution petition, the garnishee had deposited a sum of Rs.5,02,373/- to the credit of the execution petition. The above said amount has been deposited in the bank and the accrued interest derived thereon comes to Rs.1,04,524/-. That has also been given credit to the decree amount of Rs.5,02,373/-. Now the total

available amount is Rs.6,06,897/-. In respect of this amount viz., Rs.6,06,897/-, the parties have mutually agreed to dissolve their dispute and therefore, this Court finds that the respondent/decreed holder is entitled to withdraw a sum of Rs.4,50,000/- from the bank account for which the revision petitioner/judgment debtor has no objection. Secondly, the revision petitioner/judgment debtor is entitled to withdraw the balance amount from the bank account for which the respondent/decreed holder has got no objection. Both the revision petitioner as well as the respondent are directed to file an application before the executing Court for withdrawal of the above said amount and to record full satisfaction of the decree.

Accordingly, these Civil Revision Petitions are disposed of in terms of the memorandum of compromise. Memorandum of compromise is also recorded and shall form part of the order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

10.11.2016

Index: Yes/No

Index: Yes

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Note: Issue order copy on 17.11.2016

To

The Principal District Court
Cuddalore

T.MATHIVANAN.J.,

gpa

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M.P.No.1 of 2007

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