



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (PD) No.1483 of 2016

A.Chandrakumar ... Petitioner/Petitioner/
Respondent/Decree Holder
Vs.
1.A.Soundararajan ... Respondents/Respondents/
2.A.Balachandran Petitioners/Judgment Debtors

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 12.07.2011 passed in E.A.No.76 of 2011 in E.P.No.23 of 2009 in Ar.O.P.No.97 of 2008 on the file of the Subordinate Judge, Thoothukudi.

For Petitioner : Mr.G.Aravinthan
For Respondents : Mr.Niranjana S.Kumar
for Mr.Balaji

O R D E R

This revision is directed against the order passed by the learned Subordinate Judge, Thoothukudi, in E.A.No.76 of 2011 in E.P.No.23 of 2009 in Ar.O.P.No.97 of 2008 filed by the petitioner herein.

2.Heard the learned counsel for the petitioner and learned counsel appearing for the respondents and perused the materials available on record.

3.The order of the Arbitrator was confirmed by the Principal Seat of this Court in A.R.O.P.No. 97 of 2008. Based on the award, the respondents filed an execution petition in E.P.No.23 of 2009 before the Subordinate Court, Tuticorin to recover the amount of Rs.5,75,153/-.The execution petition is being contested by the petitioner by filing a counter. The petitioner also filed E.A.No.76 of 2011 for appointment of an Advocate Commissioner to note down the status of the machineries.

4. The grievance of the petitioner is that as per the award, the petitioner is entitled for 1/3rd of the value of the machineries, but the entire machineries were taken by the respondents/decree holders. The application was resisted by the respondents contending that the machineries of the petitioner are



lying in the property and despite their request, he has not taken away his machineries. The learned Judge, having found that the appointment of an Advocate Commissioner is not necessary, dismissed the application.

5. The learned counsel for the petitioner would submit that at the time of passing the award, the entire machineries were in the custody of the respondents and as per Order 21 Rule 45 C.P.C. they should be treated as custodians of the properties and if there is any damage caused by the property, they are liable to pay the value of the machineries to the petitioner. He would further submit that unless the value is ascertained, the petitioner cannot be directed to pay the award amount.

6. Per contra, the learned counsel for the respondents would submit that the arbitration award was passed in the year 2005. It is also confirmed by the Principal Seat of this Court in the year 2008 and the execution petition has been successfully dragged on by the petitioner from 2009 and therefore, the respondents filed C.R.P.No.1227 of 2013 for speedy disposal of the execution petition, which was allowed on 22.07.2014. It is further submitted that only thereafter the petitioner started to file one application after another to drag on the proceedings and execution petition was filed only for recovery of money and the value of the machineries cannot be ascertained in this proceedings.

7. It is seen from the records that execution petition was filed only for recovery of money. In such a fact situation, appointment of advocate commissioner is totally unnecessary in this case. The learned Judge rightly dismissed the petition. If any machineries of the petitioner have been sold by the respondents, the petitioner can work out his remedy in the manner known to law.

8. With the above observation, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge, Thoothukudi.

+1cc to Mr.A.V.Arun, Advocate SR.No.42414