

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRP. No.1584 of 2014
and MP.No.1 of 2014

C.Thirugnanasamandhar

.. Petitioner

Vs

1. Arumugam

2. Rajeswari

.. Respondents

Prayer: Civil Revision Petition filed under Article 115 of Civil Procedure Code praying to set aside the order dated 06.09.2013 passed in E.P.No.6 of 2013 in O.S.No.33 of 2007 on the file of the Principal Subordinate Judge, Tindivanam and allow the revision petition.

For Petitioner : Mr.R.Sunil Kumar

For Respondents: No appearance for R1
Mr.M.Udhya Kumar for R2

ORDER

This Civil Revision Petition is filed to set aside the order dated 06.09.2013 passed in E.P.No.6 of 2013 in O.S.No.33 of 2007 on the file of the Principal Subordinate Judge, Tindivanam.

2.The respondents have filed the suit in O.S.No.33 of 2007 before the Principal Subordinate Judge, Tindivanam. A compromise memo was executed between the parties in the aforesaid suit. As per the terms of compromise memo, the petitioner agreed to pay a sum of Rs.2,00,000/- cash to the second respondent. But, thereafter the petitioner was not in a position to pay the amount of Rs.2,00,000/- as lump sum. Subsequently, the petitioner paid Rs.50,000/- during January 2011 and Rs.20,000/- during the February 2012, but the petitioner did not receive any receipt for the aforesaid payments. The respondents filed the EP.No.6/13 for an amount of Rs.2,89,000/-. In the aforesaid Execution Petition the impugned order has been passed attaching the property of the petitioner. Hence the petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioner submitted that pursuant to the interim order dated 29.04.2014 passed by this Court, the petitioner has paid a sum of Rs.1,30,000/- to the second respondent. Now, the dispute is only with regard to the balance amount of Rs.70,000/-. Further, according to the petitioner, in the light of the statement made in the affidavit before the Court below, the petitioner had paid the aforesaid amount to the second respondent. Hence, he preferred the present revision to set aside the impugned order passed by the Court below.

4. Per contra, the learned counsel appearing for the second respondent submitted that the petitioner has not produced any receipt for payment of the amount of Rs.50,000/- and Rs.20,000/- during January 2011 and February 2012. Therefore, in the absence of any materials to show the above said payment, the Court below has rightly rejected the contention of the petitioner and allowed the execution petition. Therefore, this petition is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. It is seen from the counter affidavit filed by the petitioner in EP No. 6 of 2013 that the petitioner has stated that he paid the amount of Rs.50,000/- in the month of January 2011, and Rs.20,000/- in the month of February 2012 to the second respondent. But, no receipt has been received from the second respondent. Hence according to the petitioner, he has to pay only the balance amount of Rs.1,30,000/-.

7. The learned counsel for the petitioner submitted that pursuant to the interim order passed by this Court in CMP MP 1 of 2004 dated 29.04.2014, the petitioner also paid a sum of Rs.1,30,000/- to the second respondent. But, the petitioner has not produced any receipts before the Court below to prove the contention that the said amount Rs.70,000/- has been paid to the second respondent. Even in the present revision the petitioner is not able to prove that the said amount has been paid to the second respondent.

8. At this stage, the learned counsel for the petitioner submitted that as per clause 4 of the memo compromise, the petitioner has to pay a balance amount of Rs.70,000/- only. It is appropriate to extract clause (4) of memo compromise:-

"The defendant shall pay a sum of Rs.2,00,000/- (Rupees Two Lakhs) in lieu of allotment of land to the 2nd plaintiff the 2nd plaintiff Mrs.S.Rajeswari shall entitle for a sum of Rs.2,00,000/- (Rupees Two Lakhs

Only) to be paid by the defendant B.Tirugnanasambandam. The said amount shall be paid by the defendant within a period of 5 months from the date of this compromise".

9. From the above clause 4 of the compromise memo, it is seen that the petitioner has to pay a sum of Rs.2,00,000/-. As per interim order of this Court dated 29.04.2014 the petitioner has paid a sum of Rs.1,30,000/-. Hence, he has to pay the balance amount of Rs.70,000/-.

10. However, the petitioner is at liberty to file an appropriate application before the Court below to pay the balance amount of Rs.70,000/- according to clause 4 of the compromise memo.

11. Therefore, the Civil Revision Petition is dismissed. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate judge
Tindivanam

+1 CC to Mr.R. SunilKumar, Advocate sr 24158

+1 CC to Mr.M. Udayakumar, Advocate sr 24260

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RJ (CO)
sp/24/5

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