

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P. (NPD) NO.1951 OF 2017
AND CMP NO.9478 OF 2017

A.Senthamilselvan

... Petitioner

Vs.

1.Kandasamy

2.Padma

3.Minor Amudhan

4.Minor Anandhan

(3&4 are minors rep. by their
guardian and next friend mother
Padma)

5.Panchali

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the exparte order and decree made in E.P.No.82 of 2016 in O.S.No.29 of 2013 dated 07.02.2017 on the file of Subordinate Judge, Neyveli, Cuddalore District.

For Petitioner : Mr.K.Srinivasan
For Respondent-1 : Mr.G.Vijaya Kumar

ORDER

This Civil Revision Petition is directed against an *exparte* order of attachment dated 07.02.2017 passed in E.P.No.82 of 2016 in O.S.No.29 of 2013 by the learned Subordinate Judge, Neyveli.

2. The petitioner, who is the third respondent in the execution petition, would raise a ground that the Court below has acted in excess of its jurisdiction and without giving notice to him. The attachment order was passed for not carrying out the amendment ordered by the Executing Court. The order of attachment by setting the petitioner *exparte* is illegal.

3. Per contra, the learned counsel appearing for the first respondent would submit that the petitioner was set *exparte* on 07.02.2017. Against the *exparte* order, he should have filed an application under Order 21 Rule 106 of the Civil Procedure Code, to set aside the *exparte* order. Whereas suppressing many material facts, he has directly come to this Court and therefore, the petition is liable to be dismissed.

4. Originally, an application for impleading the legal representatives of judgment debtor was filed in E.A.No.457 of 2016. After receiving notice, respondent nos.2, 3 and 4 were remained *exparte*. Thereafter, an application in E.A.No.783 of 2016 was filed to set aside the *exparte* order dated 09.08.2016 and the same was allowed and the revision petitioner has filed his counter in E.A.No.457 of 2016. Thereafter, E.A.No.457 of 2016 was allowed, after hearing both sides. Though the revision petitioner and respondent nos.2, 3 and 4 were brought on record, they failed to contest E.P.No.82 of 2016, by filing counter. Therefore, the Execution Court ordered attachment, by setting them *exparte*. Against which, the revision petitioner has filed an application on 08.03.2017 to set aside the *exparte* order of attachment dated 07.02.2017. On 14.03.2017, it was returned for rectification of certain defects. On 23.03.2017, the revision petitioner has represented the petition along with an application to condone the delay in representation, vide E.A.No.145 of 2017. Subsequently, E.A.No.145 of 2017 filed by respondent nos.2, 3 and 4 against the *exparte* order of attachment was allowed and the attachment order was set aside, on 24.03.2017. Whereas, the revision petitioner has failed to represent the petition filed by him under Order 21 Rule 106 of

the Civil Procedure Code till date. On 06.06.2017, E.P.No.82 of 2016 was allowed and an order of attachment was passed and the matter stood posted to 22.06.2017 for attachment. At this stage, the petitioner has filed the above Civil Revision Petition.

5. From the perusal of the pleadings, it is clear that there is an *exparte* order of attachment passed on 07.02.2017, in E.P.No.82 of 2016. The revision petitioner has filed a petition under Order 21 Rule 106 of the Civil Procedure Code to set aside the *exparte* order of attachment. On 14.03.2017, it was returned for rectification of defects. On 23.03.2017, the revision petitioner has represented the above said petition and the delay in representation was condoned vide E.A.No.145 of 2017. Thereafter, there is no whisper about the petition to set aside *exparte* decree preferred by the revision petitioner and straight away, he has filed the present Civil Revision Petition.

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6. It is well settled that when an procedure is contemplated under law, the parties are expected to adhere to the procedure strictly. Here, the revision petitioner, having filed a petition to set aside the

ex parte order dated 07.02.2017, under Order 21 Rule 106 of the Civil Procedure Code, should have pursued his relief there itself and he is not entitled to file a revision before this Court without exhausting the alternative remedy available to him. The revision petition filed by the petitioner is clearly an abuse of process of law and is not maintainable as per the provisions of the Civil Procedure Code. Therefore, without taking any stringent views, this Civil Revision Petition is dismissed, as not maintainable. No costs. Consequently, connected civil miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
TK

To

The Subordinate Judge
Neyveli,
Cuddalore District.

14.09.2017

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M.GOVINDARAJ, J.

TK



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