

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

**Civil Revision Petition (NPD) No.297 of 2017
and
C.M.P.No.1385 of 2017**

1.S.Radhakrishnan
2.R.Kanniammal

.. Petitioners

/versus/

P.Chakravarthy

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 21.11.2016 passed by the learned X Assistant Judge, City Civil Court, Chennai in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 in O.S.No.2744 of 1998 and to take the same on file.

For Petitioners :Mr.Prakash Goklaney

For Respondent :Mr.M.Balasubramanian

ORDER

This Civil Revision Petition has been filed to set aside the order dated 21.11.2016 passed by the learned X Assistant Judge, City Civil Court, Chennai in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 in O.S.No.2744 of 1998 and to take the same on file.

2. According to the petitioners, the petitioners had filed an application in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 under Section 47 of Civil Procedure Code to declare that the decree passed in the above said suit as in executable and to dismiss the execution petition as not maintainable and at the unnumbered stage, the said application was dismissed on 21.11.2016 as not maintainable. The petitioners had raised a ground that there was a fraud played by the respondent in the earlier proceeding. Therefore, the present application filed by the revision petitioner is maintainable. Hence, the order passed by the Courts below is erroneous and unsustainable in law.

3. The learned counsel appearing for the respondent would submit that the very same ground was raised by the petitioners in the earlier application filed under Order 21, Rule 97 of the Civil Procedure Code and the said application was dismissed. Therefore, the present application is not maintainable.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

5. The only point for determination in the civil revision petition is that the application in E.A.No.SR53972 of 2016 filed by the petitioners is not maintainable under law at the unnumbered stage. The petitioners have raised the issue that

the respondent has obtained a decree against the petitioners fraudulently. Therefore, this Court cannot go into the merits of the case, at the stage of maintainability.

6. The learned counsel appearing for the respondent would submit that in the event of numbering the said application, an opportunity shall be given to the respondent to raise all the grounds before the Executive Court including the maintainability of the petition in E.P.No.1128 of 2012 on the file of the X Assistant Judge, City Civil Court, Chennai.

7. Considering the submission made by the learned counsel appearing for the respondent, this Court is inclined to set aside the order passed by the Executive Court in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 in O.S.No.2744 of 1998, dated 21.11.2016. Accordingly, this Court passes the following order:-

(1)The Executive Court/X Assistant Judge, City Civil Court, Chennai is directed to number the application in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 in O.S.No.2744 of 1998, if it is otherwise in order, without insisting upon the maintainability of the petitioners.

(2) In the event of numbering the said application, the respondent herein is directed to file counter affidavit to raise all the issues including the maintainability of the execution petition before the Executive Court.

(3)The Executive Court/X Assistant Judge, City Civil Court, Chennai is directed to dispose of the Execution Application in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 on merits and in accordance with law including maintainability of the execution petition, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of a copy of this order.

8. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2017

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Note:Registry is directed to return the original records to the concerned Court below in E.A.No.SR53972 of 2016 in E.P.No.1128 of 2012 in O.S.No.2744 of 1998.

Note:Issue order copy on 11.04.2017

To

The X Assistant Judge,
City Civil Court,
Chennai.

D.KRISHNAKUMAR, J.

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C.R.P.(NPD)No.297 of 2017

06.04.2017

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