

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP (NPD) No.1695 of 2011
and
M.P.No.1 of 2011

1. Victor Jayaraj
2. N.Kuppusamy

.. Petitioners

Vs.

1. Jayapriya Chit Funds Private Limited,
Neyveli – 2
Cuddalore District.

2. A.Martin
3. P.Selvaraj
4. S.Xavier
5. K.Kanagavel

.. Respondents

PRAYER: Revision Petition under Article 227 of the Constitution of India against the fair and decretal orders dated 6.1.2011 passed in E.P.No.204 of 2006 in A.R.No.367 of 2006 on the file of the Principal Sub Court, Virudhachalam.

For Petitioners : Mr.H.Manojin

For Respondents : Mr.S.Kumar (for R1)

Respondents 2 to 5 (*Given up*)

ORDER

This civil revision petition is filed under Article 227 of the Constitution of India against the fair and decretal orders dated 6.1.2011 passed in E.P.No.204 of 2006 in A.R.No.367 of 2006 on the file of the Principal Sub Court, Virudhachalam.

2. The facts in a nutshell, as could be deciphered from the documents on record, are as under: The second respondent became a subscriber of chit conducted by the first respondent and the value of the chit was Rs.2,50,000/-. The second respondent prized his chit in the seventh drawal held on 08.02.2005 for Rs.1,83,900/-. It is stated that for receiving the said prize money, the second respondent had to furnish security and accordingly, the petitioners and respondents 3 to 5 offered themselves to be the surety to the first respondent. Based on the same, a promissory note for a sum of Rs.2,10,000/-, representing the future subscription payable by the second respondent to the said chit was executed by the petitioners as well as respondents 2 to 5 and, thereafter, the prize money was paid to the second respondent on 22.03.2005.

3. It is alleged by the first respondent that the second

respondent defaulted payment of subscription from 9th to 19th instalments and, therefore, the first respondent was constrained to issue a notice under Section 33(1) of the Chit Funds Act on 15.09.2005 to the petitioners as well as respondents 2 to 5 and despite issuance of such notice, no amount was paid. It is averred that under such circumstances, the first respondent made an application for reference of dispute to arbitration under Section 64 of the Chit Funds Act, 1982 and Rule 45 of the Tamil Nadu Chit Funds Rules, 1984, before the Joint Registrar of Chit, Cuddalore, stating that the amount due from the petitioners and respondents 2 to 5 is Rs.2,21,219/- with interest at 24% per annum from the date of the application till payment and costs of adjudication and in that reference, being A.R.No.367 of 2006, an *ex parte* order was passed in favour of the first respondent on 27.04.2006.

4. It is averred that to execute the said order dated 27.04.2006 passed in A.R.No.367 of 2006, the first respondent filed E.P.No.204 of 2006 on the file of the Principal Sub Court, Virudhachalam for attachment of salary of the petitioners herein and others. It is the case of the petitioners that as per the order dated 27.08.2007 passed in the above E.P.No.204 of 2006, a sum of Rs.4,000/- per month was

recovered from the salary of the petitioners and after recovering the amount assured by the petitioners, the E.P. was terminated as far as the petitioners are concerned, after recording full satisfaction.

5. It is the case of the petitioners that after recording full satisfaction and terminating the execution petition, the pro-order dated 08.11.2010 was issued to the garnishee to deduct a sum of Rs.4,000/- per month from the salary of the petitioners and on 06.01.2011, the Court below made absolute the attachment of salary and closed the execution petition. Assailing the said order, the present civil revision petition is filed.

6. The main contention of the learned counsel for the petitioners is that the execution petition having been terminated after recording full satisfaction, the court below erred in making the attachment of their salaries absolute, without proceeding against the principal debtor, who has valuable immovable properties, and without giving sufficient opportunity of hearing to the petitioners and by way of a cryptic order.

7. It is further contended that as per Section 60 of the Code of Civil Procedure, attachment of salary, including various allowances

such as dearness allowance, house rent allowance, medical allowance, etc., is exempted and, therefore, the order passed by the Court below is liable to be set aside.

8. Per contra, the learned counsel appearing for the first respondent justified the reasons that weighed with the court below in making the attachment of salary of the petitioners absolute and contended that inasmuch as the petitioners stood as surety, they are jointly and severally liable to make good the loss suffered by the first respondent.

9. I heard Mr.H.Manojin, learned counsel for the petitioners and Mr.S.Kumar, learned counsel for the 1st respondent and perused the documents available on record.

10. A perusal of the application for reference made by the first respondents shows that the petitioners as well as respondents 3 to 5 stood as surety on behalf of the second respondent, who subscribed for the chit. The petitioners as well as respondents 2 to 5 are certainly liable to pay the balance due in the chit with interest, costs, expenses, etc., in terms of the promissory note executed by them. The factum of

execution of the promissory note is not in dispute.

11. It is trite that if the order passed in the reference could not be satisfied by any reason by attachment of the property or salary of the subscriber, the Executing Court, at the instance of the disputant, can proceed against the other persons who stood as surety and executed the promissory note in favour of the disputant. In the case on hand, the Court below, on being satisfied that the amount due and payable to the first respondent was not fully realized from respondent 2 to 5, ordered attachment of the salaries of the petitioners, which is in line with the terms of the Promissory Note, to which the petitioners are signatories. The petitioners having known the consequences of execution of such Promissory Note and their liability based on the same, at this juncture, cannot rescind from the same. Therefore, in my considered view, interference of this Court is unwarranted.

12. With regard to the grievance of the petitioner that the Court below had ordered attachment of salary and other allowances, which is exempted under Section 60 of the Code of Civil Procedure, it is made clear that it is always open to the petitioners to approach the Executing Court and vent their grievance in this regard. If such plea is

made by the petitioners, it is open to the Executing Court to analyse as to whether there is any excess attachment every month, and in case the amount attached is in excess, then the Executing Court should necessarily pass orders so as to restrict the quantum of attachment as per Section 60 of the Code of Civil Procedure.

13. With the above observations, this civil revision petition is dismissed. No costs. Consequently, M.P.No.1 of 2011 is closed.

06.02.2017

Note: Issue order copy on 05.01.2018
vs

Index : Yes
Internet : Yes

To

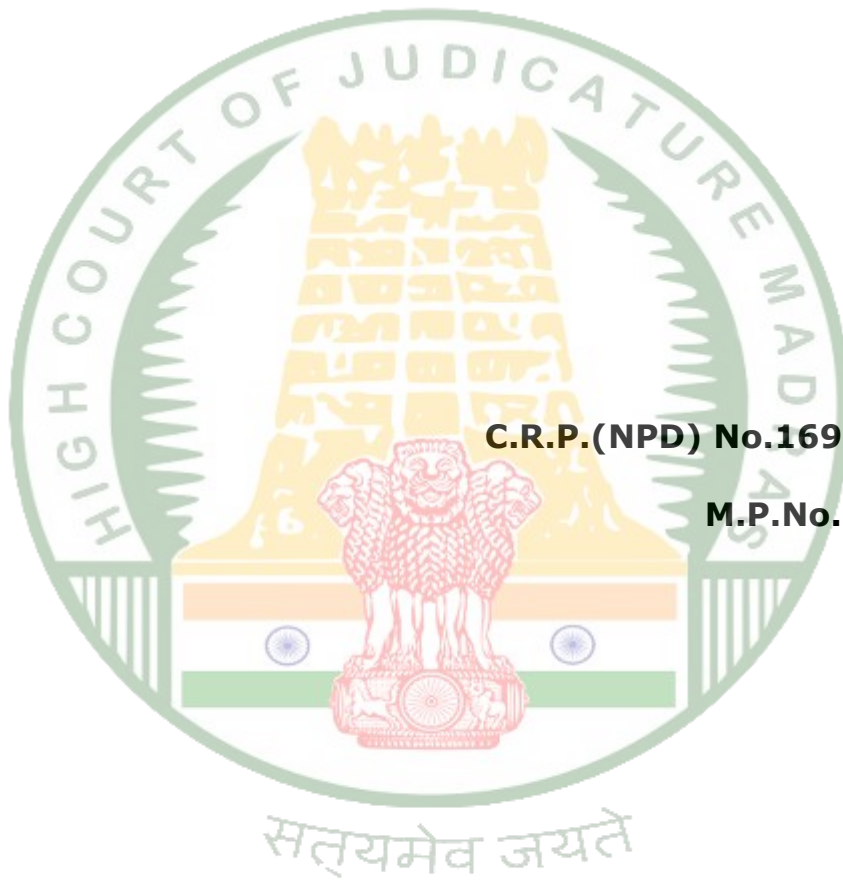
The Principal Sub Judge
Virudhachalam

सत्यमेव जयते

WEB COPY

M.V.MURALIDARAN,J.

VS



**C.R.P.(NPD) No.1695 of 2011
and
M.P.No.1 of 2011**

WEB COPY

06.02.2017