

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.642 of 2017
and
C.M.P.No.3251 of 2017**

E.Ganesan

.. Petitioner

Vs.

M/s.Shriram Transport Finance Co. Ltd.,
Rep. by its Authorised Representative
Mr.S.Muthuraj

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 25.10.2016 in E.P.No.155 of 2015 in Arb.Case No.552 of 2010 on the file of District Court-II, Kancheepuram and prays that the same may kindly be set aside.

For Petitioner : Mr.K.Muthamil Raja

ORDER

The petitioner herein by way of this Civil Revision Petition seek to quash an order dated 25.10.2016 passed in E.P.No.155 of 2015 on

the file of the learned District Judge, District Court No.II, Kanchipuram, ordering arrest of the petitioner for the petitioner's default to satisfy a Decree standing in favour of the respondent/Decree holder, finance company.

2.According to respondent finance company, the petitioner availed a vehicle loan by entering into hypothecation agreement on payment of monthly installments. However after availing the said loan, the petitioner failed to pay the loan amount and he was in default of monthly installment. Therefore the respondent filed Arbitration case in Arb.Case No.552 of 2010 before the Arbitral Tribunal at Chennai and the same came to be allowed by passing award in favour of the respondent.

3.According to the respondents, the petitioner even then has failed to satisfy the award amount, the respondent filed E.P.No.155 of 2015 before the Execution Court praying to order arrest of the petitioner and send him to civil prison for realization of Rs. 6,08,355/-.

4.The said application came to be allowed by ordering arrest of the petitioner herein. The said order of arrest is under challenge in this

civil revision petition.

5.I heard Mr.K.Muthamil Raja, learned counsel for the petitioner and perused the entire materials available on record.

6.It is seen from the records that it is the specific case of the revision petitioner that the loan account corresponding to the arbitration case was closed much prior to the institution of the arbitration case itself as the subject vehicle was handed over to the respondent finance company and the remaining due payable was also paid by him.

7.It is his further case that notice was not served in the arbitration claim petition and he was served notice only in the execution proceedings.

8.It is further submitted that the petitioner will be able to substantiate his claim through production of the bill and payment statements towards the amount paid by him.

9.To substantiate his claim of payment he also filed copies of

receipts in the typed set of papers from Page Nos.16 to 40 filed before this Court.

10. According to the revision petitioner the loan was closed and hence, he has not in the default as claimed by the respondent.

11. Considering the submissions of the learned counsel for the petitioner and as well taking account of the age of the petitioner being more than 70 years, I am of the considered opinion that the petitioner has to be given a chance to produce the relevant documents before the execution Court.

12. This Civil Revision Petition is allowed by setting aside the order dated 22.05.2015 passed in E.P.No.155 of 2015.

13. The Execution Court is directed to conduct the enquiry under Order 21, Rule 40 of CPC.

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14. This Civil Revision Petition is allowed by setting aside the order dated 22.05.2012 passed in E.P.No.155 of 2015 and the Execution Court is directed to pass orders in the above E.P. within a

period of two weeks from the date of receipt of a copy of this order.
Consequently, connected miscellaneous petition is closed.

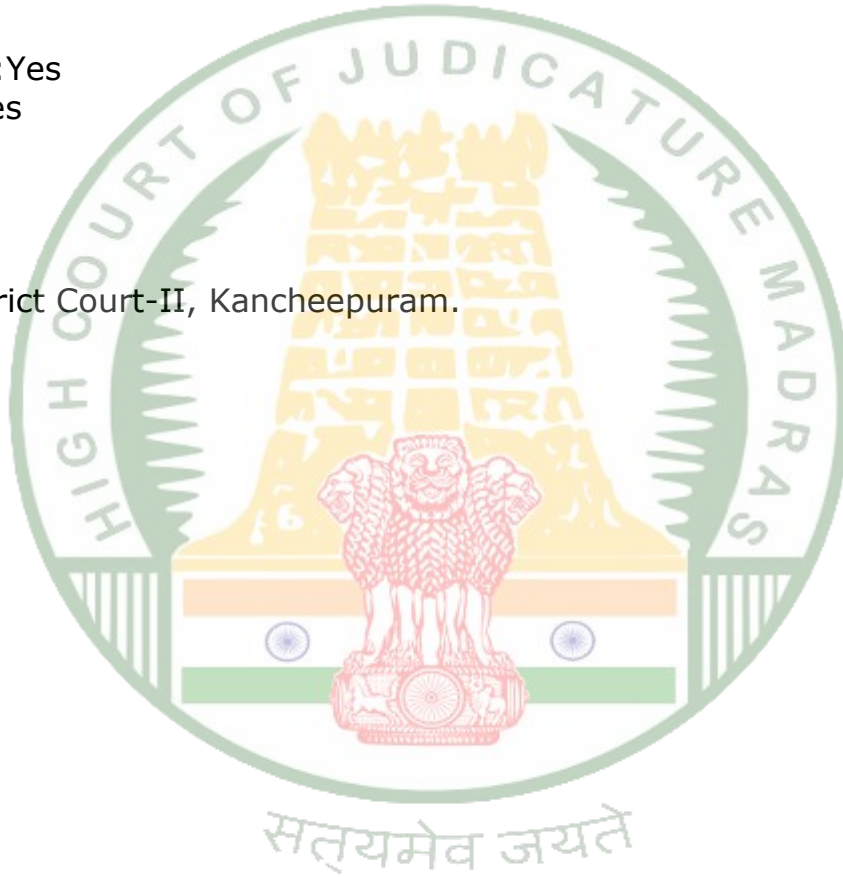
24.02.2017

Note: Issue order copy on 23.01.2019
vs

Internet: Yes
Index: Yes

To

The District Court-II, Kancheepuram.



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M.V.MURALIDARAN, J.

VS



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