

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.477 of 2015
& M.P.No.1 of 2015

Vasantha

.. Petitioner

Vs.

M/s.Shriram City Union
Finance Ltd
No.123, Angappa Naicken Street,
Chennai 01.

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the order in E.A.No.1258 of 2013 in E.P.No.3645 of 2010 on the file of the IX Assistant Judge City Civil Court, Chennai dated 01.12.2014.

For Petitioner : Mr.P.Sidharthan

For Respondent : Mr.K.V.Ananthakrishnan

ORDER

This Civil Revision Petition is filed against the order in E.A.No.1258 of 2013 in E.P.No.3645 of 2010 on the file of the IX

Assistant Judge City Civil Court, Chennai dated 01.12.2014.

2.The petitioner is the Judgment Debtor in E.P.No.3645 of 2010 and petitioner in E.A.No.1258 of 2013. The respondent is the decree holder in E.P.No.3645 of 2010 and respondent in E.A.No.1258 of 2013. The petitioner has filed the said E.A under Section 47 C.P.C for dismissal of the E.P on the ground that there are factual and legal errors apparent on the face of the record and Execution Petition cannot be proceeded with the award calculation generated by the decree holder as the petitioner is not aware of the calculation arrived at by the decree holder. There is no loan agreement entered by the petitioner and loan agreement is not available with the petitioner. The respondent failed to produce the loan agreement despite giving a letter to produce the same. The Registrar of Chits, without any evidence let in by the petitioner as well as the respondent automatically passed award. The objection of the petitioner was not considered by the Assistant Registrar of Chits and prayed for deciding the issue before proceeding with the E.P.

3.The respondent filed counter affidavit and submitted that E.P has been filed for recovery of Rs.2,63,60/- by selling immovable

properties. The petitioner in the counter filed in the E.P has stated that E.P has been filed on the basis of Arbitration Award and the same is correct. The petitioner, without filing any petition to set aside the award, is not entitled to maintain the present application filed under Section 47 of C.P.C in the Execution Proceeding.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, materials available on record and also the counter filed by the petitioner in the E.P, dismissed the present application.

5.Against the said order dated 01.12.2014 made in E.A.No.1258 of 2013 in E.P.No.3645 of 2010, the petitioner has filed the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.From the materials available on record, it is seen that the respondent has filed E.P.No.3645 of 2010 for realising the amounts as per the Arbitration Award. The petitioner has taken a stand that

E.P is not maintainable since Arbitrator did not consider the objection of the petitioner and without any evidence let in by the petitioner and respondent, the Arbitrator passed the award. The statement of the account given by the respondent is not correct. There is no loan agreement and there is no amount due. These grounds are not valid for allowing the petition filed under Section 47 of C.P.C. The Execution Court cannot go beyond the decree, unless the Court which passed the decree did not have jurisdiction. Even if the decree is erroneous or illegal, the remedy available to the judgment debtor is only by way of appeal. In the present case, the petitioner has not filed any proceedings to set aside the Arbitration Award. On the other hand, in the counter affidavit filed by her in the E.P, the petitioner has stated that by selling one immovable property, the entire amounts claimed by the respondent in E.P has been settled in full. The petitioner also went on to state that she has paid various amounts to the Collection Agent of the respondent. In the cross examination, she has stated that without her consideration, her Advocate has prepared the counter affidavit. The petitioner has taken contradictory stand with regard to her liability. The petitioner has not stated that Arbitrator, without any jurisdiction has passed award. On the other hand, her stand is that Arbitrator

did not consider her objection and without evidence, the Arbitrator has passed the award. This contention cannot be considered and decided by Executing Court. In the result, this Civil Revision Petition is liable to be dismissed as devoid of merits.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2017

Internet: Yes/No

Index: Yes/No

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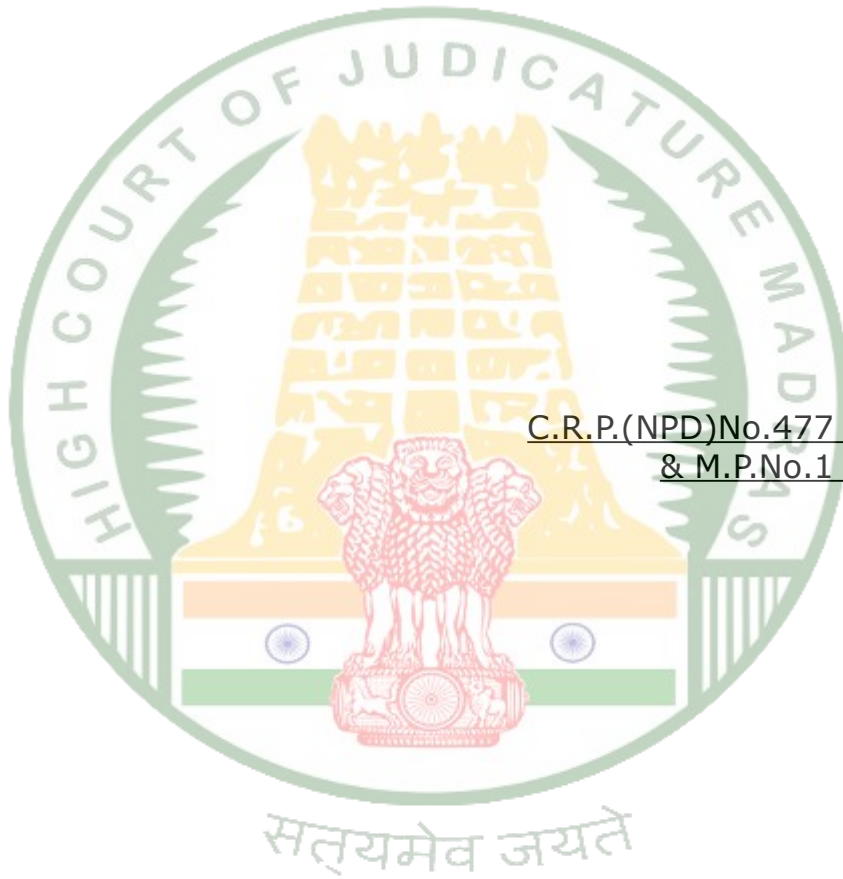
To

The IX Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI, J.

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