

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P (NPD) No.1779 of 2016
and
C.M.P No.9377 of 2016

M.P. Pinosiya

... Petitioner

vs.

1. Dhanalakshmi Seenivasan
Chit Fund (P) Ltd.,
rep. By its Branch Manager
Kallakurichi Branch
Villupuram District.

2. V. Shanmugasundaram (Died)

3. Alagirisamy

4. S. Bhuvana
W/o. Mr. V. Shanmugasundaram (Late)

5. Inba
D/o. Mr. V. Shanmugasundaram (Late)

6. Megha
D/o. Mr. V. Shanmugasundaram (Late)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the petition and attachment order dated 11.12.2013 in E.P.No.25 of 2013 in Award No. O.P.50 of 2012 on the file Sub Court, Kallakurichi.

For Petitioner : Mr. B. Vijay

For respondents : Mr. V. Rajesh Babu for R1
R2 – Died
No Appearance for R3 to R6

ORDER

This Civil Revision Petition is filed to set aside the petition and attachment order dated 11.12.2013 in E.P.No.25 of 2013 in Award No. O.P.50 of 2012 on the file Sub Court, Kallakurichi.

2. The 2nd respondent has taken chit from the 1st respondent chit company. The petitioner is the guarantor for the aforesaid chit benefit availed by the 2nd respondent. The petitioner is working as a Senior Technician Grade II in Neyveli Lignite Corporation Limited, Neyveli. Since the 2nd respondent committed default in repayment of chit amount, the 1st respondent initiated arbitration proceedings against the 2nd respondent and the guarantors, for recovery of money. An ex-parte award was passed in O.P.No.50 of 2012 on 20.11.2012. The 1st respondent filed E.P. No.25 of 2013 before the Sub Court, Kallakurichi, under Order 21 Rule 10 & 11 of CPC, for attachment of salary of the judgment debtors. Consequently,

recovery proceedings were initiated against the petitioner. The 1st respondent had recovered the petitioner's monthly salary from the month of June 2014 till 30th March 2017 i.e., 34 instalments. According to the petitioner, as per the *Proviso* issued under Section 60(1)(i) of Code of Civil Procedure, the 1st respondent cannot recover the due amount from the salary, beyond 24 months and therefore the impugned order is liable to be set aside and prays to allow this Civil Revision Petition.

3. Learned counsel for the 1st respondent fairly stated that in the light of the provisions under Section 60(1)(i) of CPC, the impugned recovery proceedings, is liable to be set aside. However, liberty may be granted to the 1st respondent to proceed with, in accordance with law, for recovery of the balance amount.

4. Heard learned counsel for the petitioner and the learned counsel for the respondents.

5. It is an admitted fact that the petitioner was a guarantor for the chit amount received by the 2nd respondent. Since the chit amount was not repaid by the 2nd respondent, the 1st

respondent initiated arbitration proceedings and an exparte award was passed in O.P. No. 50 of 2012 on 20.11.2012, in favour of the 1st respondent. Therefore, the 1st respondent filed an execution proceedings in E.P. No.25 of 2013 before the Sub Court, Kallakurichi, for attachment and consequently recovery proceedings were initiated against the petitioner. The 1st respondent recovered the due amount, from the petitioner's salary, from the month of June 2014 to March 2017, towards recovery of the aforesaid decree amount, with interest. In this regard, learned counsel for the petitioner relies upon the provisions, under Section 60(1) of the Act. It is useful to extract the provisions as follows :-

" [60. Property liable to attachment and sale in execution of decree?

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging

to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely:?

.....

(i) salary to the extent of the first [four hundred rupees] and two third of the remainder] in execution of any decree other than a decree for maintenance.

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the

attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

(ia) one-third of the salary in execution of any decree for maintenance; "

Learned counsel for the petitioner also relies upon the decision of the Hon'ble High Court, Bombay in the case of **Bapu Gadgil vs. Smt. Rama, reported in I (2003) DMC 770, wherein paragraph 11**, it is held as follows :-

" 11. Thus, it is evident that on reading proviso in its totality, it appears that salary portion liable to attachment in execution of a decree is attachable for a period of twenty four months continuously or intermittently; in execution of one and the same decree. For a gap of twelve months, such salary portion is totally exempt from attachment by anybody and even for execution of different decree. The salary portion would again be liable for attachment after time gap of twelve months, but for the purpose of execution of a

different decree and not one and the same decree for the purpose of execution of which it was already attached for a period of twenty four months earlier.”

6. In the light of the aforesaid provisions under Section 60(1)(i) of CPC and the decision cited supra, I have no hesitation to interfere with the order of the Execution Court.

7. Accordingly, the Civil Revision Petition is allowed and the impugned attachment order dated 11.12.2013 in E.P.No.25 of 2013 in Award No. O.P.50 of 2012 on the file Sub Court, Kallakurichi, is set aside. However, liberty is granted to the 1st respondent, to proceed, in accordance with law, to recover the balance amount. The Connected Miscellaneous Petition is closed. No order as to costs.

25.04.2017

Index : yes / no

Speaking order/ Non-speaking order

[Issue order copy on 28.04.2017]

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To
The Sub Court, Kallakurichi

D.KRISHNAKUMAR, J.

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(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to

[an agriculturist or a labourer or a domestic servant] and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the government [or of a local authority or of any other employer] or payable out of any service pension fund notified in the Official Gazette by the Central Government or the State government in this behalf, and political pension;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;