

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.2613 of 2009  
and M.P.No.1 of 2009

Soundararajan

.. Petitioner

Vs.

1.V.Kuppusamy  
2.Sri Venkatesa Paper and Boards  
Rep. by the Managing Director Sumathi Prasad  
Administrative Office  
148-A, Palani road  
Venkatesa mills (post)  
Udumalpet  
Coimbatore District.

3.Sumathi Prasad  
4.Meena R.Sampath

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,  
against the order dated 16.07.2009 made in E.A.No.85 of 2009 in  
E.P.No.46 of 2008 in O.S.No.78 of 2005 on the file of the  
Subordinate Court, Udumalpet.

|                |                      |
|----------------|----------------------|
| For Petitioner | : Mr.N.Umapathi      |
| For R1         | : Mr.C.Veeraraghavan |
| RR2 to 4       | : Batta due          |

ORDER

The Civil Revision Petition is filed against the order dated 16.07.2009 made in E.A.No.85 of 2009 in E.P.No.46 of 2008 in O.S.No.78 of 2005 on the file of the Subordinate Court, Udumalpet.

2. The petitioner is the third defendant, first respondent is the plaintiff and the respondents 2 to 4 are the defendants 2 to 4 in O.S.No.78 of 2005. The petitioner is the third respondent, first respondent is the petitioner and the respondents 2 to 4 are the respondents 1, 2 and 4 in E.P.No.46 of 2008. The respondent filed suit for recovery of money. The said suit was decreed by the judgment and decree dated 22.06.2006. First respondent filed E.P.No.46 of 2008 to execute the decree for arrest and detention of the petitioner in civil prison. The petitioner did not appear on the date of hearing in the Execution Court on 15.10.2008. He was set exparte and order of arrest was passed. Challenging the same, the petitioner filed E.A.No.85 of 2009 to set aside the exparte order dated 15.10.2008 passed in the E.P.

3. According to the petitioner, during the time of hearing, he

was suffering from diarrhoea, back pain and he was bed ridden. Therefore, he could not attend the hearing.

4. The first respondent filed counter affidavit opposing the said application on the ground that the petitioner has not furnished any details regarding when he was suffering from illness and nature of treatment taken by him. The first respondent took steps for five occasions to execute the order of arrest. The petitioner evaded arrest only to prevent the first respondent from enjoying the fruits of the decree. The petitioner remained exparte and now has come out with the present application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials on record and contention of the parties, allowed the application on condition that the petitioner should deposit 50% of the E.P. amount.

6. Against the order dated 16.07.2009 made in E.A.No.85 of 2009, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as the learned counsel for the first respondent and perused the materials

on record.

8. A reading of the impugned order of the learned Judge reveals that the learned Judge considering all the materials on record, passed reasoned order in the interest of justice by directing the petitioner to deposit 50% of the E.P. amount. In the circumstances, I hold that there is no irregularity or illegality in the order of the learned Judge dated 16.07.2009 warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. The learned Subordinate Judge, Udumalpet, is directed to dispose E.P.No.46 of 2008 as expeditiously as possible in any event not later than two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

17.07.2017

Index:Yes/No

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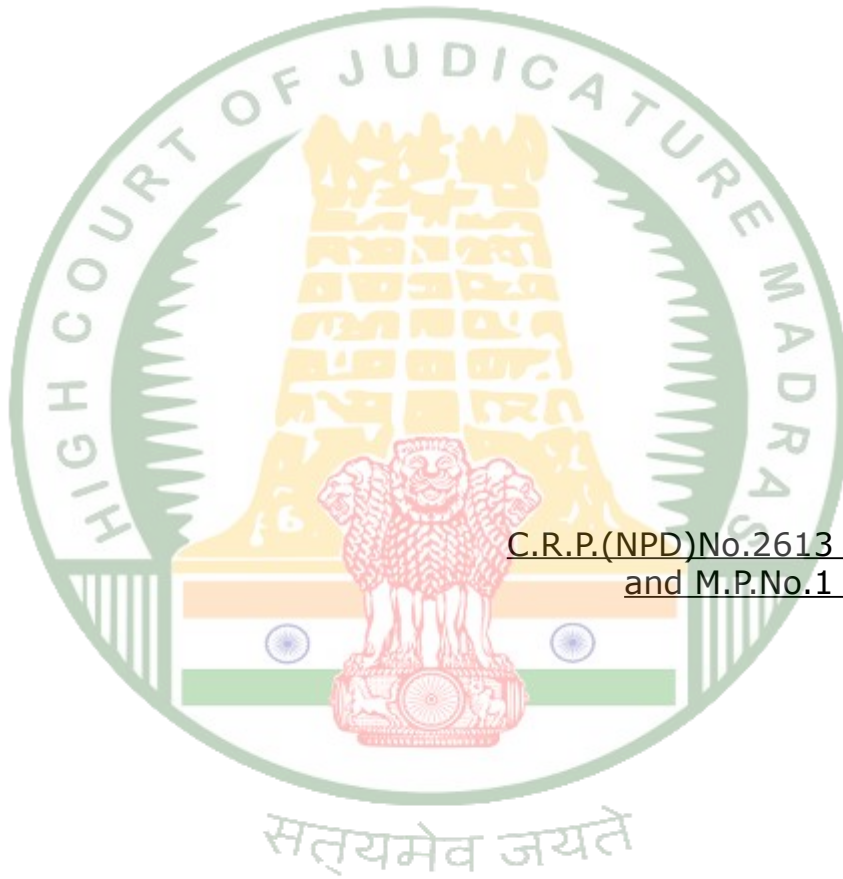
To

The Subordinate Judge, Udumalpet.

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V.M.VELUMANI,J.

Kj



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