

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

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THE HONOURABLE MS.JUSTICE R.MALA

Civil Revision Petition (NPD) Nos.2013 and 2014 of 2016
and
C.M.P.Nos.10481 and 10482 of 2016

C.Arjunan
both CRPs.

... Petitioners in

..Vs..

M/s.Shamrock (Regd)
a Partnership firm represented by
its Partner Bhaskar T.Mendon
S/o.Thaniya Salian
No.335/341, Ward No.20, New Colony,
15, Velampalayam Village, Tirupur.
in both CRPs

... Respondent

Prayer in both CRPs. : These Civil Revision Petitions have been filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 30.10.2015 passed in E.A.Nos.2 and 3 of 2014 in E.P.No.140 of 2013 in O.S.No.415 of 2005 on the file of the II Additional District and Sessions Court, Tiruppur.

For petitioner

: Mr.T.Sundaranathan
in both CRPs

COMMON ORDER

Challenging the impugned order passed in E.A.Nos.2 and 3 of 2014 in E.P.No.140 of 2013 in O.S.No.415 of 2005 dated 30.10.2015, on the file of the II Additional District and Sessions Court, Tiruppur, the present revisions have been preferred.

2. The learned counsel for the petitioner would submit that the respondent as plaintiff filed a suit for recovery of money. The suit was decreed. After contest, the plaintiff-firm filed a suit E.P for attachment of the property. Immediately, the petitioner herein filed E.A.No.2 of 2014 to declare that the attachment order passed in E.P.No.233 of 2007 is null and void without any basis and also filed E.A.No.3 of 2014 under Section 47 of C.P.C to declare that the decree dated 25.07.2007 passed in the above O.S.No.415 of 2005 on the file of the Additional District Fast Track Court No.V, Coimbatore at Tiruppur, is null and void and non-executable against the defendant.

3. After considering the counter filed by the respondent, the trial Court has dismissed both the petitions, against which, the present revisions have been preferred.

4. At the time of admission of the revision petitions, the arguments

of the learned counsel for the petitioner, are heard in length.

5. The learned counsel for the petitioner would submit that the decree passed in O.S.No.415 of 2005 is non-executable decree. The plaintiff-partnership firm is only registered at Mumbai. In this registration certificate, the place of business has not been mentioned as Tiruppur. It was not registered at Tiruppur. But the case has been filed at Tiruppur. The decree has been passed by the Court not having jurisdiction. So, the decree itself is non-est in the eye of law. For the said reason, he relied upon decision of the Supreme Court reported in *CDJ 1976 Supreme Court 309 (Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others)*, *CDJ 1989 Supreme Court 82 (Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) Through his LRs.)* and also *CDJ 2009 Madras High Court 1241 (K.I.M. Sajjden Vs. A.1254, Theni Co-operative Sale Society Limited, Theni, rep. by its Special Officer/Deputy Registrar)*.

6. Learned counsel for the petitioner further submitted that as per Section 68 of the Partnership Act, the document Exhibit R1 filed by them, is admissible and reliable and conclusive proof. The petitioner has shown the place of registration as Mumbai. But Tiruppur has not been shown and hence, the trial Court is not having any jurisdiction to entertain the suit.

7. The second argument is that since the partnership firm is

unregistered one, the decree has been passed on the basis of the suit filed by this partnership firm and so, the decree itself is non-est in the eye of law. He also relied on the decision reported in *CDJ 2012 Orissa High Court 100* (M/s.Konark Cylinders and Containers Pvt.Ltd Vs.Suresh Gangadas Bhai Patel & Others) and prayed for admission of this C.R.Ps.

8. Considering the above arguments and on perusal of the typed set of papers, it is seen that the respondent/plaintiff has filed a suit for recovery of amount due on housing loan, stating the petitioner herein was working as a Manager in the plaintiff-firm. He borrowed Rs.10,00,000/- for construction of the house and since he has not repaid the amount, the plaintiff filed the suit after issuance of notice. The first question to be decided is as to whether it is true that as per Section 68 of the Partnership Act, any statement or intimation recorded or notified in the registration shall be an contract agreement. There is no quarrel over the said provision. Further, Tirupur has not been mentioned as the place of business. In the document Ex.A7, it is stated the partnership firm has been registered in this year 1991. The new place of business has been mentioned as Mumbai and the partnership name has been mentioned therein. It is true that the place of business has not been mentioned as a Tiruppur. But, on perusal of Ex.P7 in which it is stated that whenever place of business has been changed and that has been intimated on 21.05.2004 and that the place has been changed from No.27, Kamer Bldg., 38, Cawasji Patel Street, Fort, Mumbai-1 to new place

of business at No.104, 10th Floor, Jolly Maker Chambe No.2, Nariman Point, Mumbai-21. But it is pertinent to note that in the plaint pleadings, it is specifically mentioned as having its factory at Tirupur, i.e. the plaintiff is shown in the plaint as *"M/s.Shamrock (Regd), a Registered Partnership firm (BA 46250) under Partnership Act represented by its Partner Sri Bhaskar T.Mendon, aged 51 years, S/o.Thaniya Salian, having its Principal Office at No.104, 10th Floor, Jolly Maker, Chamber II, Nariaman Point, Mumbai - 400 021 and having its Factory at No.335/341, Ward No.20, New Colony, 15, Velampalayam Village, Tirupur"*.

9. It shows that the plaintiff/respondent partnership firm is a registered one. In such circumstances, the argument advanced by the learned counsel for the petitioner that the place of factory has not been mentioned in extract from the Registrar of Firms, and it will not take away the rights of the register partnership firm. In the circumstances, I am of the view that the arguments advanced by the learned counsel for the petitioner do not merit any acceptance. So, the decision relied upon the learned counsel for the petitioner, reported in CDJ 2012 Orissa High Court 100 (cited supra), particularly, paragraphs 8 and 22, are not applicable to the facts of the present case. Paragraphs 8 and 22 are extracted hereunder:

8. On the rival contentions of the parties, the following questions fall for consideration by this Court:-

(i) Whether this revision petition filed under Section 115 CPC is maintainable in law?

(ii) Whether the impugned order dated 20.08.2011 passed by the Civil Judge (Sr.Division), Bhubaneswar rejecting the petitioner's application made under Section 47, CPC is sustainable in law on the ground that the Executing Court cannot go beyond the decree?

22. In the petitioner filed under Section 47, CPC though the petitioner has raised a point that the decree passed is a nullity, it has not taken specific stand which has been taken in the present revision petition and the same goes to root of the case. Therefore, in the interest of justice, the matter is remitted back to the Executing Court with liberty to the petitioner-Company as well as the opposite parties to raise all the points before the Executing Court in support of their contentions and the Executing Court is directed to consider the same and pass appropriate orders keeping in view the observations made in the preceding paragraphs.

Since the plaintiff in this case is a partnership firm so, the above citation is not applicable.

10. It is pertinent to note that in the Supreme Court decision relied upon by the learned counsel for the petitioner reported in CDJ 1976 Supreme Court 309 = 1977 (2) SCC 424 (cited supra), it is stated the decree passed by the Court without jurisdiction is not est in the eye of law and the same is illegal. Learned counsel also relied upon the Supreme Court decision reported in CDJ 1989 SC 082 = 1990 (1) SCC 193 (cited supra), wherein in paragraph 12, this

Court has held that it is a well established principle that a decree passed by a Court without jurisdiction is a nullity and the plea can be set up whenever the decree is sought to be enforced or relied upon, and even at the stage of execution or in collateral proceedings. There is no quarrel over the proposition laid down in the above decision of the Apex Court. It is true, the decree passed by the Court without having jurisdiction is non - est in the eye of law.

11. Even though the defendant has not raised any objection, the Court passed the decree without jurisdiction, which means it is nullity. Further, this Court has already held that the plaintiff-firm is a registered firm, and there is no need to mention wherever the factory exists. As already mentioned, loan has been obtained by the defendant for construction of the house and the cause of action for filing the suit has arisen only at Tiruppur. The suit has been filed at Tiruppur and the decree has been passed after contest.

12. In such circumstances, I am of the view that the trial Court has rightly dismissed the application filed under Section 47 CPC and I do not find any reason to interfere with the finding. Hence, these Civil Revision Petitions deserve to be dismissed by confirming the fair and decreetal order dated 30.10.2015 passed in E.A.Nos.2 of 2014.

13. Besides, it is true that if the Court passed a decree without

jurisdiction, it is non-executable and it can be decided in the application filed Section 47 CPC. As already stated, the Court having a jurisdiction, has passed a decree. Furthermore, the suit has been filed by the competent person which is a registered partnership firm, having been registered at Mumbai, but the factory is at Tiruppur, where the defendant/revision petitioner is working under the plaintiff-firm and borrowed money and cause of action arose there, hence, Court at Tiruppur having jurisdiction to decide the case.

14. In the above said circumstances, I am of the view that the fair and decretal order passed in I.A.No.2 of 2014 in E.P.No.140 of 2013 does not warrant any interference, it is hereby confirmed. In respect of E.A.3 of 2014 is concerned, the suit has been filed for recovery of money. Since, the judgment debtor not paid that the decree amount, hence, he filed the E.P.No.140 of 2013. The Revision Petitioner has challenged the decree and judgment passed in suit Apex Court. So, the decree passed by the trial Court has been confirmed. Hence, the petition ought to have pay the decree amount. Since, he has not paid the decree amount in E.P for attachment has been filed. This Court already held the decree passed by the Court having the jurisdiction. Hence, the decree is valid. Since, he has not paid that amount, the Executing Court has rightly ordered attachment after considering his objections.

15. In such circumstances, I am of the view is that the attachment

order passed by the trial Court is confirmed, as it does not warrant any interference.

16. Hence, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

23.01.2017

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To

The II Additional District and Sessions Court, Tiruppur.

R.MALA,J.,

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