

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.334 of 2016
and C.M.P.No.1777 of 2016

M/S.Sekar Stores Home Mart
carrying on business at
No.37 Arcot road
Kodambakkam, Chennai-600 024.

.. Petitioner

Vs.

Vignesh Metal Mart
Rep. by its Proprietor
R.Muthaiyan
carrying on business
at No.4 Paramasivan Chetty street
Park Town, Chennai-600 003.

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.11.2015 in E.P.No.1793 of 2014 in O.S.No.7597 of 2012 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.T.T.Ravichandran

ORDER

This civil revision petition is filed against the fair and decreetal order dated 18.11.2015 in E.P.No.1793 of 2014 in O.S.No.7597 of 2012 on the file of the IX Assistant City Civil Court, Chennai.

2.Learned counsel for the petitioner would submit that the respondent as a plaintiff filed a suit in O.S.No.7597 of 2012 for recovery of money due on business transaction. The suit has been decreed, against which, the petitioner has not preferred any appeal. It is further submitted that the respondent has filed an execution petition in E.P.No.1793 of 2014 for attachment of movable property in the possession of the petitioner. The petitioner has filed a detailed counter stating that the respondent did not satisfy the requirements of Order 38 Rule 5 of C.P.C. and further it is stated that there are no such properties as found in the schedule of the execution petition. But the trial Court without considering the same allowed the petition. Therefore, he prays for setting aside the order of attachment.

3. At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4. On perusal of the typed set of papers, it reveals that the respondent/plaintiff filed the suit for recovery of money due on business transaction. The petitioner herein has been running an individual business firm. The decree was passed on 19.08.2013, against which, no appeal was preferred by the petitioner/defendant. So the decree and judgment passed by the trial Court is final. Now the respondent/plaintiff has filed the execution petition for attachment of movable property.

5. According to the learned counsel for the petitioner, the movable properties mentioned in the execution petition are not available with the petitioner and that factum was not considered by the trial Court. If the amin found that the movable properties mentioned in the execution petition are not available with the petitioner, he would return the warrant, which will not cause any prejudice to the revision petitioner. Furthermore, the petitioner has filed a counter stating that there were no dues payable to the decree holder. It is to be noted that the petitioner is carrying on business in the name and style of M/S. Sekar Stores Home Mart. In

such circumstances, I am of the view that the petitioner with a view to drag on the proceedings has filed the revision, which is mere

R.MALA,J.

kj

abuse of process of the Court. Hence I do not find any reason to entertain the revision. Therefore, the Civil Revision Petition is dismissed with costs.

6.The petitioner is directed to pay the costs of Rs.1,000/- (Rupees one thousand only) to the Tamil Nadu State Legal Services Authority, High Court, Chennai. Consequently, connected Miscellaneous Petition is closed.

23.01.2017

Index:Yes/No

kj

To

IX Assistant City Civil Court, Chennai.

C.R.P(NPD).No.334 of 2016
and C.M.P.No.1777 of 2016

<http://www.judis.nic.in>