

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.4054 of 2016

Vijayakumar
By Power Agent
Sri.Shankar Rao
S/o.Veershetty Desai
H.No.9-5-349, Vivekanand Nagar
Bidar District
Karnataka

.. Petitioner/Petitioner/D.H/Plaintiff

-Vs.-

MGP Murugesan
Prop. M.G.P & Sons
Residing at No.13, West Kalmandapam Road,
Chennai - 600 013.

.. Respondent/Respondent/J.D/Defendant

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India against the number the return of the E.A.SR.No.43559/2016 in E.P.No.919/2016 in O.S.No.64/2006 on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Sri Shankar Rao (Party-in-Person)

ORDER

The petitioner has come forward with the present Civil Revision Petition seeking for a direction to the learned IX Assistant Judge, City Civil Court, Chennai to taken on file the application filed by the petitioner under Order 21 Rule 62 CPC in E.A.SR.No.43559/2016 in E.P.No.919/2016 in O.S.No.64/2006.

2.The party-in-person is the power agent of Vijayakumar, S/o.Mahadappa Karbari. The said Vijayakumar has filed the suit for recovery of money in O.S.No.64/2006 on the file of the learned Additional Civil Judge (Sr.DN), BIDAR and the said suit was decreed as follows:

“The defendant shall pay a sum of Rs.4,13,000/- to the plaintiff with interest at 18% from the date of suit till its realisation”.

3.The aforesaid decree has been transferred to the file of the City Civil Court, Chennai where the properties are situated. The party-in-person as a power agent has filed the execution petition in E.P.No.919/2016 for attachment of the movable properties. While so, when the E.P is pending, the power agent has filed an application under Order 21 Rule 43 and also Order 21 Rule 62, after

refusal of the notice by the judgment debtor. At this juncture, it would be appropriate to incorporate Order 21 Rule 43 CPC.

“43.Attachment of movable property, other than agricultural produce, in possession of judgment debtor.- Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Provided also that when the property attached consists of livestock, agricultural implements or other articles which cannot be conveniently removed and the attaching officer does not act, under the first proviso to this rule, he may, at the instance of the judgment-debtor or of the decree-holder, or of any person claiming to be interested in such property, leave it in the village or at the place where it has been attached:

(a) in the charge of the person at whose instance the property

is retained in such village or place, if such person enters into a bond in Form No. 15-A of Appendix E to this Schedule with one or more sufficient sureties for its production when called for; or

(b) in the charge of an officer of the Court, if a suitable place for its safe custody is provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance.

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in Rule 55 or Rule 57 or Rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment.”

4.However, as per the new amendment, Order 21 Rule 62 of CPC has been omitted. So, the Trial Court has rightly returned the petition filed under Order 21 Rule 62 CPC stating that when the EP is pending, the applications preferred by the revision petitioner is not maintainable.

5.Further, in pursuant of the order passed by this Court dated 23.12.2016 calling for status report, a report has been received wherein it was specifically mentioned that the E.P.No.919/2016 was taken on file on 29.04.2016 and

pending for service of notice to the respondent/JD and based on affidavit of service (AOS) filed by the petitioner/DH, ordered for steps for substituted service (paper Publication) by the decree holder and adjourned to 11.01.2017.

6.Considering all the above facts and circumstances, I am of the considered view that when once an execution petition seeking for attachment of the movable properties is pending, the applications preferred by the petitioner is not maintainable and the executing Court has rightly considered the same and passed an appropriate order and the same does not require interference by this Court.

7.In fine, the Civil Revision Petition stands dismissed as devoid of merits.

No costs.

12.01.2017

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To

IX Assistant Judge,
City Civil Court,
Chennai.

R.MALA, J.

C.R.P.(NPD).No.4054 of 2016

Dated : 12.01.2017

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