

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4073 of 2009
and M.P.No.1 of 2009

K.Kannan

.. Petitioner

Vs

1.Jayapriya Chits Funds P.Ltd.,
Neyveli - 2,
Cuddalore District.

2.S.Murali

3.M.Kannan

4.D.Deishlos

5.K.Vijayakumar

6.K.Perinbam

7.K.Nallu

8.T.Marudhai

9.D.Joseph raj

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order dated 05.11.2009 made in E.P.No.144 of 2009 in A.R.No.535 of 2007 and passed by the Hon'ble Subordinate Court, Neyveli.

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For Petitioner : No Appearance

For R1 : Mr.V.Manisekaran

For R2 to 9 : Dismissed for Default
Vide Order dated 19.10.2012

ORDER

This Civil Revision Petition has been filed to set aside the Order dated 05.11.2009 made in E.P.No.144 of 2009 in A.R.No.535 of 2007 and passed by the Hon'ble Subordinate Court, Neyveli.

2. The petitioner is the Judgment Debtor and the first respondent is the Decree Holder in E.P.No.144 of 2009 on the file of the Subordinate Court, Neyveli. The first respondent obtained decree against the petitioner and the respondents 2 to 9. The petitioner and the other respondents did not pay the decretal amount. The first respondent filed an E.P for a sum of Rs.4,73,084/- by attachment of salary of the petitioner and the other respondents. The petitioner entered appearance and was paying certain amounts towards decretal amount. The learned Judge, passed conditional order on 14.10.2009, directing the petitioner to pay a sum of Rs.25,000/-. The petitioner on 05.11.2009, failed to pay the said amount as ordered by the learned Judge. Therefore, the petitioner and other respondents were set exparte and ordered attachment of their salary.

3. Against the said exparte order dated 05.11.2009 made in E.P.No.144 of 2008 in A.R.No.535 of 2007, the present civil revision petition is filed by the petitioner.

4. Heard the learned counsel appearing for the first respondent and perused the materials available on record. On 04.09.2017, when the matter was taken up for hearing, there was no representation for the petitioner. Today also there is no representation for the petitioner. Therefore, the civil revision petition is disposed of by this Court on merits.

5. The petitioner, in the grounds of revision had stated that the Execution Court has no power to pass conditional order, directing the petitioner to pay the amounts. On the date of hearing, the petitioner tendered a sum of Rs.10,000/- as part payment towards the decretal amount. The learned Judge, without receiving the same, set the petitioner exparte and ordered attachment of salary. Only when a party to the E.P is not present, the Court can set the party exparte and the Court has no power to set a person exparte when the said person was present in the Court. These grounds are without merits. The learned Judge has give an opportunity to the petitioner to pay the amount in instalments. It is not correct to state that the Court has no

power to pass conditional orders. The amounts due as per the E.P. is

V.M.VELUMANI,J

rna

Rs.4,73,084/-. Taking into consideration the said amount, the conditional order passed by the learned Judge is not excessive and not arbitrary. The learned Judge has ordered attachment of salary when the petitioners and others have failed to pay the amount due as per the Decree.

6. In view of the above facts, the civil revision petition is dismissed as devoid on merits. Consequently, connected miscellaneous petition is closed. No costs.

06.09.2017

rna/gsa

To

The Subordinate Judge,
Neyveli.

सत्यमेव जयते
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