

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2842 of 2012
and
M.P.No.1 of 2012**

M.Sudhakar

.. Petitioner

Vs.

Sri Ram City Union Finance Ltd., by its
Power agent Ravichandran,

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decretal Orders dated 14.12.2011 made in REP.No.794 of 2009 in ACP.(PL)No.489 of 2008 passed by the learned II Additional District Munsif, Salem.

For Petitioner : Mr.J.Franklin

For Respondents : Mr.K.V.Ananthakrushnan

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ORDER

This civil revision petition is filed as against an Order and Decree dated 14.12.2011 on the file of the learned II Additional District Munsif Court at Salem in REP.No.794 of 2009 in A.C.P(PL)No.489 of 2008.

2.The perusal of records disclose that the respondent finance Ltd as claimant has filed the above Arbitration claim petition, claiming an amount of Rs.54,362/- towards balance payment of a loan said to have availed by the revision petitioner along with other incidental charges.

3.According to respondent Finance Company Ltd., Rs.21,680/- was due on principal amount and along with other incidental charges and calculating the future installment figured at Rs.54,362/- and thereby the above claim petition came to be filed.

4.It is seen that the revision petitioner by not appearing before the arbitral claim proceedings failed to defend the above claim of the respondent and therefore he is found set ex-parte by Arbitration Tribunal and an award dated 18.07.2009 came to be passed against the revision petitioner as prayed for by respondent company.

5.In pursuant to the above award, the respondent company filed execution petition in R.E.P.No.794 of 2009 for execution of Award by directing the revision petitioner to pay the award amount alleging that

despite of sufficient means that the revision petitioner failed to satisfy the Award.

6.In the said proceedings the Execution Court hearing upon the above application filed under Order XXI, Rule 38 of CPC, issued notice to the revision petitioner calling upon him to pay the award amount.

7.Whereas in the said circumstance the revision petitioner by contending that he was totally unaware of above Arbitral Award and the entire Arbitral proceedings against him, besides claiming that he was bed ridden for over a year and that his left hand and left leg were completely paralyzed for which he was treated for systematic hypertension, CVA Capsule Ganglionic Hemorrhage in S.K.S. Hospital at Salem, pleaded that he is unable to make his livelihood and has no means to pay the decree amount and prayed for dismissal of the said application.

8.The Learned Judge on appraisal of averments made in petition filed by the respondent under Order XXI, Rule 38 of CPC and as well revision petitioner's counter held that it is proved by the respondent that the revision petitioner had sufficient means to pay the Decree

amount. It was further held that as the revision petitioner failed to take steps against the decree passed against him, he was ordered to undergo civil arrest. The said order of civil arrest is under challenge herein.

9.I heard Mr.J.Franklin, learned counsel for the petitioner and Mr.K.V.Ananthakrushnan, learned counsel for the respondent and the entire materials available on records are perused.

10.On perusal of the impugned order, absolutely this Court is clueless as to how the trial Court had come to conclusion that the respondent had proved sufficient means of revision petitioner when there was no documentary or oral evidence let in by the respondent company to that effect.

11.It is equally important to state that respondent's petition dated 14.12.2009 lack material particulars as to means or any property details. In the said circumstance there can be no doubt that the impugned order is passed mechanically without making an endeavor as to whether the revision petitioner had means to satisfy the award.

12.It is needless to say that when it is a specific case of the revision petitioner that he was totally paralyzed and bed ridden besides contending that he is unable to make his livelihood, the Executive Court ought to have made an effort to find the factual position of the party by directing the Decree Holder to produce some material evidence to show that despite sufficient means, the revision petitioner failed to satisfy the award.

13.At this juncture, it is equally important to state that the revision petitioner has filed medical records to show that he suffered out of medical ailment. Thus the Order of the Execution Court is without proper appraisal of averments made in petition and the counter in R.E.P No: 794 of 2009. In such circumstance, I have no hesitation to hold that there was no piece of evidence put forth by the Decree Holder to exhibit revision petitioner's financial ability or property belongings sentencing Civil arrest is erroneous and absolutely not supported by any valid reason.

14.For the foregoing reasons this Civil Revision Petition Stands allowed by setting aside the order passed by the Executing Court and

the matter remanded back to the executing Court for the evidence of the Decree Holder and the execution Court is directed to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2017

Note: Issue order copy on 03.12.2018
vs

Index: Yes.
Internet: Yes

vs

To

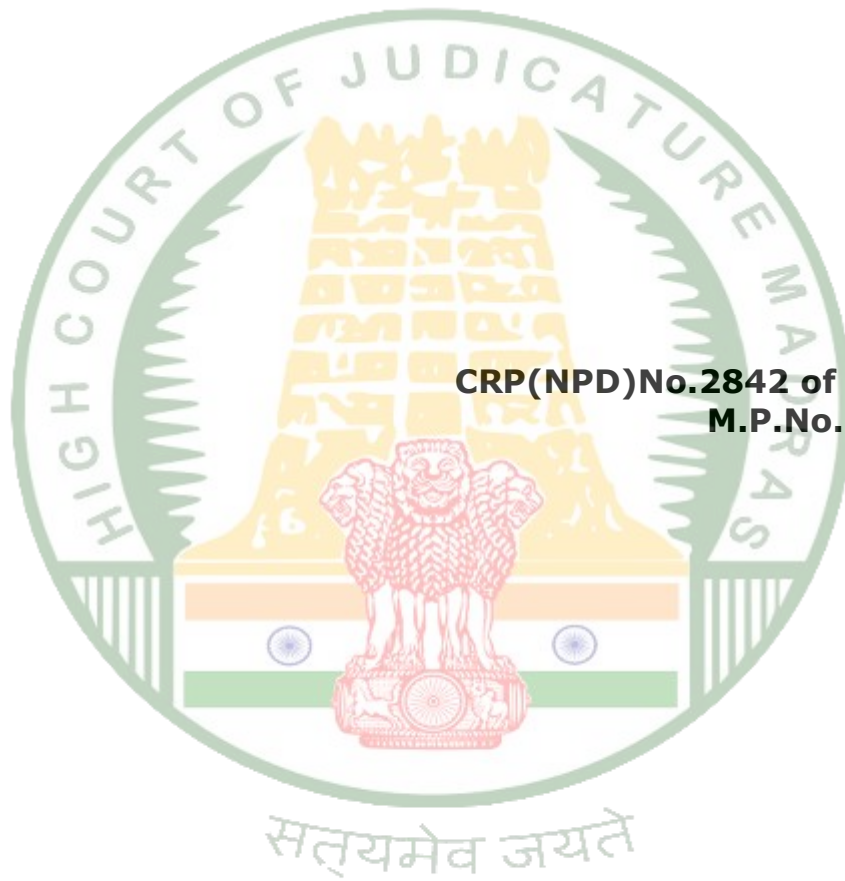
The II Additional District Munsif,
Salem.



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M.V.MURALIDARAN, J.

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