



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(NPD) (MD)No.1128 of 2017

Rajendran : Revision Petitioner/Petitioner/
Judgment debtor/1st respondent

Vs.

Swamydhas : Respondent/Respondent/
Degree Holder/Petitioner

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the Order passed in E.A.No.121 of 2017 in E.P. No.34 of 2016 in M.C.O.P No.30 of 2015 on the file of the Sub Court, Padmanabhapuram, dated 28.03.2017 in so far as the condition to deposit Rs.1,50,000/- on or before 28.04.2017 is concerned.

For Petitioner : Mr. C.K.M.Appaji

O R D E R

This revision petition is directed against the order passed in the Execution Application filed under Order 21 of Rule 106 and 151 of C.P.C.

2.The brief facts of the case is that the respondent herein met with a motor accident in which the Revision Petitioner herein, is the rider of the offending vehicle and due to the accident, the respondent herein has sustained severe injury and he was admitted in the hospital on 08.03.2013 and discharged after surgery on 15.03.2015. Arraying, the respondent has filed a claim petition, seeking compensation Rs.7,50,000/- before the Motor Accidents Claims Tribunal, where the revision petitioner herein, remained absent and set as ex-parte.

3.After considering the submissions made by the claimant as well as second respondent, the Motor Accidents Claims Tribunal has awarded Rs.2,40,000/-, towards compensation along with the cost of litigation. Thereafter, the respondent herein has filed Execution Petition in E.P. No.34 of 2016, for recovery of the money. At that juncture the Revision Petitioner has filed an Execution Application in E.A.No.121 of 2017, seeking the



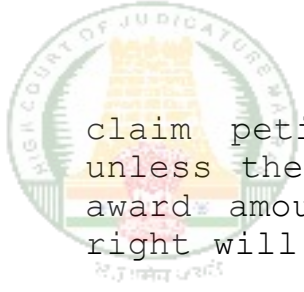
indulgence of the Court, setting aside the order passed in the Execution to Arrest the petitioner as mode of recovery of Execution Petition amount.

4. At this juncture, the revision petitioner has filed an application to set aside the ex-parte order passed in the Execution Petition to Arrest the petitioner, contending that the petitioner suffers from ailment, hence could not approach his counsel to appear before the Execution Proceedings, was not in a position to contest the Execution Petition and put forth the fact that already application is filed to set aside the ex-parte award passed in M.C.O.P.No.30 of 2015. Further the order of the arrest for recovery of decree amount passed in E.P.No.34 of 2016, will cause great prejudice and affect his carrier as Head Constable in Eraniel Police Station. Hence, the revision petitioner sought for setting aside the ex-parte order passed in E.P.No.34 of 2016 for arrest.

5. The Trial Court after considering the facts of the case and balancing the prejudice to be caused to the Decree Holder by delaying the compensation of the injuries sustained, has directed the revision petitioner to deposit Rs.1,50,000/- and allowed the Execution Application.

6. The revision petitioner herein contends that he is being a police constable, is not in a position to mobilise to Rs.1,50,000/- to deposit, in compliance with the order passed by the Execution Court. Therefore, revision petitioner seeks indulgence of this Court to consider the conditions imposed, since it is excessive and onerous beyond the Judgment debtor's capacity. It is also contended that the Execution Petition for Arrest, at the first instance without resorting to other means to recover the award amount is nothing but coercive action curtailing the right of the Judgment debtor.

7. This Court finds no merit in the above contention of the revision petitioner, who has involved in the motor accident causing injury to the respondent. Hence, he is bound to compensate the victim. When an opportunity was given to him to contest the claim petition, he had remained himself absent, hence he was set as ex-parte. Thereafter considering the status of the claimant the injuries sustained by him and the counter of the second respondent, Motor Accidents Claims Tribunal has passed an award of Rs.2,40,000/- on 10.09.2015. This Revision Petitioner herein neither contested the matter nor produced document to show his vehicle is insured with the second respondent. Hence, a decree was passed against this revision petitioner alone. After the order passed in the application to arrest, the revision petitioner has come forward to set aside the ex-parte decree passed in the Execution Petition as well as in the Motor Accident



claim petition. Therefore, the tribunal has thought fit that unless the Revision Petitioner is directed to deposit 50% of the award amount of Rs.1,50,000/-, the interest of the respondent right will be prejudiced.

8. This court finds no illegality in the said order, but for submission that the condition of deposit of Rs.1,50,000/- may be reduced, so as to enable the revision petitioner to deposit the same and contest the matter on merits. Considering the said submission, this Court directs the Revision Petitioner to deposit a sum of Rs.1,00,000/- instead of Rs.1,50,000/- as ordered by the Court below. The time limit for deposit is 15 days from today, failing which the order passed in E.A.34 of 2016, shall be revived.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar.

To
The Subordinate Judge,
Sub Court,
Padmanabhapuram.

+1CC to M/S.C.K.M.Appaji, Advocate, SR.No. 60529

C.R.P(NPD) (MD) No.1128 of 2017
15.06.2017

KM/LS
AM/SV MMS/SAR 3/19.06.2017/3P/3C