



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.215 of 2017
and C.M.P (MD) No.951 of 2017

S.Sathiyamoorthy ... Petitioner/Petitioner/2nd Respondent/
Judgment Debtor

Vs.

Sri Ram City Union Finance Limited Thanjavur,
Having Office at,
N.1658, South Main Street,
CUB Upstairs,
Thanjavur, rep. By its
Branch Manager,
S.Jeyaprakash ... Respondent/Respondent/Petitioner/
Decree Holder

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 01.12.2016 passed in E.A.No.43 of 2016 in E.P.No.30 of 2015 in A.O.P.No.184 of 2011 on the file of the II-Additional District and Sessions Judge, Thanjavur.

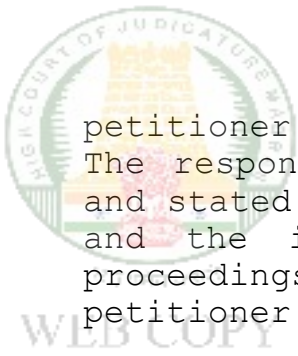
For Petitioner : Mr.G.Karnan

ORDER

The petitioner has filed the above Civil Revision Petition against the fair and decreetal order, dated 01.12.2016 passed in E.A.No.43 of 2016 in E.P.No.30 of 2015 in A.O.P.No.184 of 2011 on the file of the II-Additional District and Sessions Judge, Thanjavur.

2.The petitioner is the second respondent in E.P.No.30 of 2015 and Judgment Debtor in Arbitration O.P.No.184 of 2011. The petitioner was set ex-parte on 11.04.2016. Therefore, attachment was ordered. The petitioner filed E.A.No.43 of 2016 to condone the delay of 63 days in filing the application to set aside the ex-parte order.

3.According to the petitioner, he gave a sum of Rs.6,500/- to his counsel to pay to the respondent in the Execution Petition. The petitioner's counsel was engaged in other Court on 11.04.2016 and therefore, he could not come to the Court and represent the



petitioner and to pay the amount and therefore, he was set ex-parte. The respondent filed counter-affidavit and opposed the application and stated that the petitioner is in the habit of remaining ex-parte and the intention of the petitioner is only to drag on the proceedings and to evade payment and attaching the salary of the petitioner.

4.The learned Judge considering all the materials on record allowed the application on condition that the petitioner paying a sum of Rs.500/- as cost to the respondent on or before 08.12.2016, failing which this petition would stand dismissed. The petitioner did not pay the cost. Hence the petition was dismissed on 09.12.2016. Against the order of dismissal, the petitioner has filed the present Civil Revision Petition.

5.The learned counsel for the petitioner submitted that the petitioner has a right to contest the Execution Petition without payment of any cost. The learned Judge failed to consider that the petitioner has paid so far a sum of Rs.53,000/- in the Execution Petition.

6.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7.From the materials available on record it is seen that the petitioner or his counsel did not appear on the date of hearing in the Execution Petition and the petitioner was set ex-parte and in the application to condone the delay in filing the application to set aside the ex-parte order, the petitioner has stated that he has given a sum of Rs.6,500/- to his Advocate and as his Advocate was held up before other Court at that time, he could not appear on that day and represent the petitioner. The learned counsel for the petitioner did not deny the contention of the respondent that the petitioner is in the habit of remaining ex-parte and filed petition to set aside the ex-parte order and that it is not the first time, the petitioner was set ex-parte. The respondent has objected for allowing the application on the ground that the petitioner is in the habit of remaining ex-parte and subsequently by filing application to set aside the ex-parte.

8.The learned Judge considering all the materials allowed E.A.No.43 of 2016 on payment of cost of Rs.500/- by the petitioner to the respondent on or before 08.12.2016. The petitioner did not pay the cost. Hence, the petition was dismissed. In the facts and circumstances of the case, there is no illegality or irregularity in the order passed by the learned Judge.

9.The learned counsel for the petitioner submitted that the petitioner is willing to pay the enhanced cost and may be permitted to participate in the Execution Proceedings and he will pay the amount regularly. He has also submitted that his salary is not

attached and Execution Petition is pending.

10. Considering the facts and circumstances of the case, the petitioner is permitted to pay a cost of Rs.5,000/- to the **The Bubble's Day Care Creche maintained by the Women Advocates Association attached to this Bench** on or before 09.02.2017 and a sum of Rs.500/- to the respondent and directed to produce the receipts before the learned II-Additional District and Sessions Judge, Thanjavur. On producing the receipts, the learned Judge is directed to hear the petitioner in E.P.No.30 of 2015 on merits. If the petitioner fails to pay the cost as directed above, the order of the learned Judge in E.A.No.43 of 2016, dated 01.12.2016 will be confirmed and attachment of salary of the petitioner has to be effected.

11. In the result, the Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The II-Additional District and Sessions Judge,
Thanjavur.

Copy to:

The Officer incharge,
Creche,
Women Advocates Association,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.G.Karnan, Advocate in SR.No.5803

PS

CSL/SKN/SAR-III/06.02.2017 :3P/4C

**C.R.P (MD) No.215 of 2017
and
C.M.P (MD) No.951 of 2017
02.02.2017**