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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.1272 of 2005

V.Malliga .. Petitioner/Judgment debtor/
Respondent

vs

Vimala .. Respondent/Decree Holder/
Petitioner

Revision filed under Section 115 of CPC against the order passed in E.P.No.266 of 2005 in O.S.No.5564 of 2003, dated 07.04.2005 on the file of the X Assistant City Civil Judge, Chennai.

For Petitioner : Mr.M.R.Thangavel

For Respondent : No Appearance

ORDER

This revision has been filed by the petitioner against the order dated 07.04.2005 passed in E.P.No.266 of 2005 in O.S.No.5564 of 2003 on the file of the learned X Assistant Judge, City Civil Court, Chennai.

2. The respondent has filed the suit, being O.S.No.5564 of 2003, for recovery of a sum of Rs.88,825/- together with interest on Rs.85,000/- at the rate of 18% per annum from the date of the suit till the date of realisation. By the judgment dated 01.09.2004, the suit was decreed as prayed with costs in favour of the respondent.

3. The respondent has fled E.P.No.266 of 2005 for realisation of the decree amount by attachment and sale of the movable properties of the petitioner described in the schedule property of the Execution Petition.

4. The petitioner resisted the Execution Petition by filing counter affidavit.



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5. Upon consideration of the rival submissions, the trial Court allowed the Execution Petition and ordered attachment of properties by 14.06.2005. Aggrieved by the same, the petitioner has filed the present revision.

6. I heard Mr.M.R.Thangavel, learned counsel appearing for the petitioner. Perused the materials available on record. No representation on behalf of the respondent.

7. The learned counsel for the petitioner submitted that the trial Court failed to appreciate that the decree holder is residing at No.18/11, Nethaji Colony, 1st Main Road, Velacherry, Chennai-42, while the judgment debtor is residing at No.11, Vel Nagar, E.B. Colony, Adambakkam, Chennai-88, which falls within the jurisdiction of the learned District Munsif Court, Alandur and therefore, the trial Court ought to have summarily rejected the Execution Petition for want of jurisdiction. He submitted that the trial Court has failed to appreciate that the suit has been filed by fabricating forged promissory notes and therefore, the decree is ex facie bad in law and suffers for want of jurisdiction. The learned counsel further submitted that the trial Court has failed to appreciate that the executing Court cannot give a supporting hand in enforcing a decree obtained by fraud, in as much as a decree carrying interest at 18% per annum is against the prohibition/bar envisaged under Money Lenders Act, 1957 and the Tamil Nadu Charging of Exorbitant Interest Ordinance, 2003. He finally submitted that the City Civil Court lacks jurisdiction to execute the decree against the defendant.

8. The respondent has not entered appearance. The office record reveals that notice has not been served on the respondent.

9. The grievance of the petitioner is that by fabricating promissory notes, the respondent has filed the suit and obtained the decree and therefore, the decree passed in the suit is not executable. The further grievance of the petitioner is that since she is residing within the jurisdiction of the learned District Munsif Court, Alandur, the Execution Petition filed before the learned City Civil Court, Chennai is not maintainable.

10. On a perusal of the Execution Petition, I find that the respondent has mentioned the petitioner's address as "No.11, Vel Nagar 2nd Street, West Velacherry, Chennai-42". In the grounds of revision, the petitioner stated that she is residing in "No.11, Vel Nagar, E.B.Colony, Adambakkam, Chennai-88". Admittedly, the petitioner has not filed any proof to show that she is residing in "No.11, Vel Nagar, E.B.Colony, Adambakkam, Chennai-88". In the absence of any proof to show that the petitioner is residing within the jurisdiction of the District Munsif Court, Alandur, it cannot be contended that the Execution



17. It is the absolute view of this Court that the order passed in the Execution Petition in E.P.No.266 of 2005 may be remand back to the same Court namely, the learned Xth Assistant Judge, City Civil Court, Chennai, to give an opportunity to this Civil Revision Petitioner, who is the judgment debtor to make the payment of 50% of the claim in the Execution Petition or make out the case by producing appropriate proof for her residence at No.11, Vel Nagar, E.B. Colony, Adambakkam, Chennai-88.

19. Since this Civil Revision Petition is pending from the year 2005 onwards, both the parties have not taken any effective steps to bring the matter for speedy disposal, but both of them keep quite for the past 13 years. Therefore, nothing will be prejudice if this Court remand back the matter to the concerned Court namely, the learned Xth Assistant Judge, City Civil Court, Chennai, for fresh disposal in respect of the residence of the Civil Revision Petitioner/judgment debtor within a stipulated period of time or permit the Civil Revision Petitioner/ judgment debtor has make the 50% of balance amount of the claim in the Execution Petition. Therefore, in the interest of justice, this Court is inclined to interfere with the order passed in E.P.No.266 of 2005 in O.S.No.5564 of 2003, dated 07.04.2005, on the file of the learned Xth Assistant Judge, City Civil Court, Chennai and the same is liable to be set aside by remand back the matter to the same Court for fresh disposal.

(a) this Civil Revision Petition is allowed by setting aside the order passed in E.P.No.266 of 2005 in O.S.No.5564 of 2003, dated 07.04.2005 on the file of the learned Xth Assistant Judge, City Civil Court, Chennai;

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copy of this order, without giving any adjournments to either parties;

(c) if the revision petitioner/judgment debtor has proved that the permanent residence of the judgment debtor is only at Adambakkam, Chennai-88, the Executing Court namely, the Xth Assistant Judge, City Civil Court, Chennai, is directed to transmit the case to the learned District Munsif Court, Alandur, Chennai;

(d) the respondent/decreed holder is permitted to withdraw the 50% of the E.P. amount has deposited by the petitioner/judgment debtor as per the order of this Court dated 21.05.2005. No costs. Consequently, C.M.P.No.9169 of 2005 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The X Assistant City Civil Judge,
Chennai.

2.The Section Officer
VR Section High Court Madras

C.R.P. (NPD) No.1272 of 2005
and
C.M.P.No.9169 of 2005

sr(co)
aa20/06/2018