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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM

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

C.R.P. (NPD) No.590 of 2005

Mahalakshmi

.. Petitioner

vs

1.R.Thangavelu

2.A.Venkatachalam

3. M/s.New India Assurance Co. Ltd.,
Kumaran Buildings,
No.11, E.V.K. Road,
II Floor, Erode.

4. M/s.Das & Co.,
No.16/30, Syrian Church Road,
Coimbatore-641 001.

5. M/s.Lakshmi Starch Ltd.,
No.16/30, Syrian Church Road,
Coimbatore-641 001.

.. Respondents

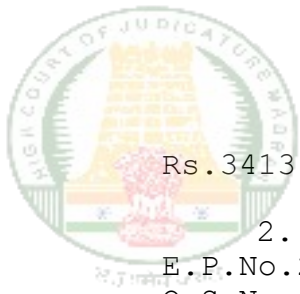
Revision filed under Article 115 of Constitution of India against the order dated 22.04.2002 passed in E.P.No.243 of 2001 in O.S.No.635 of 1989 on the file of the II Additional Sub Court, Coimbatore.

For Petitioner : Mr.Krishnan
for M/s.A.Sivaji

For Respondents : Mr.J.Chandran for R3

ORDER

This revision has been filed against the order dated 22.04.2002 passed in E.P.No.243 of 2001 in O.S.No.635 of 1989 on the file of the II Additional Sub-Court, Coimbatore, whereby, the learned Judge directed the third respondent to pay a sum of



Rs.3413.25 and costs of the Execution Petition by 05.06.2002.

2. The petitioner has filed Execution Petition, being E.P.No.243 of 2001, for realising the amount decreed in O.S.No.635 of 1989. In the Execution Petition, the petitioner claimed a sum of Rs.35,536.85 with subsequent interest from the third respondent and in default in payment of the amount by the third respondent, the petitioner sought attachment of the movable properties owned by the third respondent, mentioned in the schedule of property.

3. Resisting the Execution Petition, the third respondent, who is the contesting respondent, has filed the counter stating that the trial Court decreed the suit for a sum of Rs.1,70,000/- together with interest at the rate of 18% per annum on 15.07.1998 with costs. Aggrieved by the same, the third respondent preferred an appeal being A.S.No.202 of 1998 before the learned District Court, Coimbatore. According to the third respondent, pursuant to the order of the Appellate Court, the third respondent deposited a sum of Rs.2,66,889/- being the 50% of the decree amount on 10.11.1998. By the judgment dated 29.03.2000, the Appellate Court allowed the appeal in part, thereby modified the liability of the third respondent to Rs.1,50,000/- with interest at 18% per annum. According to the third respondent, apart from depositing a sum of Rs.2,66,889/-, on 10.07.2000, they have also paid a sum of Rs.2,23,703/-. Thus, totalling a sum of Rs.4,90,792/- was paid. Therefore, the interest claimed by the petitioner in column 8 of the Execution Petition cannot be sustained. It is stated that after deposit of Rs.2,66,889/-, the petitioner is entitled to a sum of Rs.65,000/- together with interest thereon. The third respondent has paid the same together with interest through cheque to the petitioner on 10.07.2000 i.e., Rs.2,33,703/- and as such there is no amount due to the petitioner. Hence, prayed for dismissal of the Execution Petition.

4. Upon consideration of the rival submissions, the learned trial Court, directed the third respondent to pay a sum of Rs.3413.25 and costs of the Execution Petition. Challenging the same, the petitioner has filed this revision.

5. I heard Mr. Krishnan for M/s. A. Sivaji, learned counsel for the petitioner and Mr. J. Chandran, learned counsel for the third respondent and perused all the materials available on record.

6. The learned counsel for the petitioner submitted that the deposit made by way of cheque by the third respondent was only a condition for the grant of stay and the petitioner was prevented from getting the decree executed till the disposal of the first appeal on 29.03.2000. Therefore, the petitioner is entitled to get the interest till she gets the benefit of the deposited



amount. He submitted that the trial Court failed to see that the deposit made by the third respondent was not pursuant to the order.

7. The learned counsel for the third respondent submitted that the petitioner is not entitled to get the amount claimed in the Execution Petition, as the third respondent has already deposited the entire decree amount in two spells. Therefore, the third respondent is even not liable to pay the amount as ordered by the trial Court.

8. The point arises for consideration is whether the trial Court was right in ordering the third respondent to pay a sum of Rs.3413.25.

9. It appears that in the Execution Petition, in column 8, the petitioner claimed the amount as under:

Principal amount decree as per the order of Appellate Court	1,50,000.00
Interest at 18% p..a from 18.12.1986 to 18.06.2000	3,64,500.00
Total	5,14,500.00
LESS: Amount realised from Court deposit after the cheque petition allowed on 12.6.2000	2,66,869.00
Balance amount	2,47,631.00
Interest on Rs.1,50,000/- at 18% p.a. from 18.6.2000 to 12.07.2000	1,700.00
Total	2,49,331.00
LESS : Amount paid through cheque No.037182 dated 12.07.2000	2,23,703.00
	25,628.00
Interest on Rs.25,628/- at 18% p.a. from 13.07.2000 to 19..08.2001	5,030.00



Total

30,658.00

Apart from Rs.30,658.00 in column 8 of the Execution Petition, the petitioner has also claimed the costs of Rs.4,878.85. In all, a sum of Rs.35,536.85 has been claimed in the Execution Petition.

10. According to the third respondent, on 10.11.1998, the third respondent deposited a sum of Rs.2,66,889/-. Like wise, on 10.07.2000, the third respondent deposited a sum of Rs.2,23,703/- and thus, as per the decree the third respondent was liable to pay a sum of Rs.3413.25.

11. In the case on hand, it is beyond any cavil that no cheque application has been filed by the petitioner to withdraw the sum of Rs.2,66,889/- lying in the Court deposit. Moreover, no material has been produced to prove that such plea of the petitioner was objected by the third respondent. When there is no cheque application filed by the petitioner and when there is no objection from the side of the third respondent, the petitioner cannot claim interest on Rs.2,66,889/- being 50% of the decree amount.

12. As rightly argued by the learned counsel for the third respondent and as rightly held by the trial Court, the petitioner is entitled to a sum of Rs.3413.25. The details are as under:

Principal amount as per the decree		1,50,000.00
Less : Amount deposited into the Court on 10.11.1998	2,66,889.00	
Less : Interest on 50% of the decree amount deposited	1,81,889.00	
Less:		85,000.00
Balance due		65,000.00
Add: Interest for Rs.65,000/- at 18% from 18.12.1986 to 10.07.2000		1,58,703.00
Lower Court cost		3413.25



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Principal amount as per the decree		1,50,000.00
		2,27,116.25
Less: Amount paid by the third respondent to the petitioner on 10.7.2000		2,23,703.00
Amount due		3,413.25

13. For the foregoing reasons, I am of the firm view that the trial Court was right in ordering the third respondent to pay only a sum of Rs.3413.25 with costs of the Execution Petition and there is no perversity in the order of the trial Court.

14. The Civil Revision Petition is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

vs

To

The II Additional Subordinate Judge,
Coimbatore.

+1 CC to Mr.J. Chandran, Advocate sr 35601.

C.R.P. (NPD) No.590 of 2005

NA(CO)
SP(13/06/2018)