

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 07TH DAY OF JUNE 2018

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.No.26 OF 2018

IN

A.No.3596 OF 2016

IN

E.P.No. 79 OF 1996

M.Suresh Kumar
S/o. late D.Manoharmal,
Carrying on Business under the name &
Style of M/s.FERRO FAB,
having its office at No.7/A,
Dr.Radhakrishna Nagar, 3rd Street,
Korukkupet, Chennai - 600 021.Plaintiff

VS

M.N.Allapitchai, Prop.
K.M.Mohamed Noohu Sahib & Co.,
No.110, Linghi Chetty Street,
Chennai - 600 001.Defendant

A.No.3596 of 2016:

1. A.M.Abdullah,
S/o.A.M.Miran

2. A.M.Ismail,
Son of A.M.Miran

3. A.Abdur Rahaman
Son of A.M.Miran
All the above three are
residing at
No.32, Angappa Naicken Street,
Chennai 600 001.

... Third party/Applicants

VS

1. M.Suresh Kumar
S/o. late D.Manoharmal,
Carrying on Business under the name &
Style of M/s.FERRO FAB,
having its office at No.7/A,
Dr.Radhakrishna Nagar, 3rd Street,

Korukkupet, Chennai - 600 021. ...Respondent/Respondent/
Petitioner/DH

2. M.N.Allapitchai, (Deceased)
Prop.K.M.Mohammed Noohr Sahib & co.,
At No.110, Linghi Chetty Street,
Chennai 600001.

(*) 3. Nazar

(*) 4. Noohu

(*) Both are residing at No.31, Nandanar Street,
Vivekananda Nagar,
Chennai - 600 118.

(*) Respondent 3 & 4 are impleaded as legal heirs of the
deceased 2nd respondent as per order dt 07.10.2016 in
Appln.No.5140/16

...Respondent2/Respondent

A.No.26 of 2018

1. A.M.Abdullah,
S/o.A.M.Miran

2. A.M.Ismail,
Son of A.M.Miran

3. A.Abdur Rahaman
Son of A.M.Miran
All the above three are
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2. M.N.Allapitchai, (Deceased)
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Chennai 600001.

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Both are residing at No.31, Nandanar Street,
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....Respondent2/J.D/Respondent

Application praying that this Hon'ble Court be pleased to set aside the order passed by the Learned Master on 15.02.2017 and may be pleased to allow the Application No.3596/2016 in Application No.330/1996 in E.P.No.79/1996.

These Applications coming on this day before this court for hearing the court made the following order:

This appeal has been filed to set aside the order passed by the learned Master on 15.02.2017 and allow the application in A.No.3596 of 2016 in A.No.330 of 1996 in Ex.P.No.79 of 1996.

2. As per the Order of this Court dated 16.03.2018, a memo of calculation has been filed by the applicants to show that they have made a payment of Rs.1,65,420.75 and it is also mentioned in the memo that the applicants have over paid a sum of Rs.1,38,282.53.

3. This is a simple suit for recovery of money, which was decreed with interest and Execution Petition has also been filed. It appears that there is an attachment Order. However, the property has been transferred by the judgment debtor to third parties. The third parties have filed this application. It is also stated that the respondent/party-in-person has originally filed an Execution Petition in E.P.No.79 of 1996 and the same was dismissed as infructuous and he has filed a fresh Execution Petition in E.P.No.59 of 2005. However, he has not received of Rs.15 lakhs from the applicants towards the discharge of the decree amount. Now it appears

that he has filed an Execution Petition including the benefit from the property and year after income and ultimately claimed a sum of Rs.10,58,46,150/- said to be due to him.

In such view of the matter, I am of the view that such calculation by the party-in-person will not stand in the eye of law. The execution Court has to see what is the decree amount actually paid with interest and if the decree amount and all expenses resulting from the attachment of the property are fully paid or satisfaction of the decree is otherwise made through the Court, the attachment order passed by the Court shall be deemed to be withdrawn as per Order XXI Rule 55 of Code of Civil Procedure.

It is the main contention of the decree holder/party-in-person, that Ex.P.No.79 of 1996 itself is dismissed on 27.01.1998. Therefore, the application filed by the applicants is not maintainable. His contention has some force. However, it is not in dispute that he has subsequently filed an Execution Petition in E.P.No.59 of 2005 and he has also admitted having received a sum of Rs.15 lakhs towards the decree amount and interest, without prejudice.

This is only a money decree, which is said to be executed, irrespective of the number of execution petition. Admittedly there is a fresh Execution Petition filed in E.P.No.59 of 2005.

In view of the same, this Court is of the view that the learned Master shall take into account the entire money paid towards the decree in both the Execution Petitions and if he is satisfied that the decree amount has been discharged and satisfaction of the decree is made, he shall pass an order keeping in mind the provision of law, namely

Order XXI Rule 55 of Code of Civil Procedure. In recovery of money decree, except the cost incidental to the litigation and interest ordered on the principal and the principal amount alone has to be taken into consideration. The alleged benefits and profits cannot be taken into consideration, particularly in an Execution Petition in money decree. According to the parties, the attachment order was passed only in the Execution Petition in E.P.No.79 of 1996 and the above Execution Petition itself has been dismissed and that also has to be taken into consideration by the Master. At any event, once the satisfaction of the decree is proved before the Court, the attachment shall be deemed to be withdrawn as per the provision of law.

With the above observations, this appeal is allowed the Order passed by the Master in A.No.3596 of 2016 is hereby set aside and the matter is remanded to the Master to dispose of the application taking into consideration all the payments made towards the discharge of the decree amount and also pass an order in respect of the attachment order already passed in the Execution Petition.

सत्यमेव जयते

Sd/.N.S.K.J

07.06.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/06.08.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.