

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4325 of 2013

1.Kandayee
2.Marimuthu

.. Petitioners

Vs.

1.Murugesan
2.M.Somasundaram

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 12.12.2012 made in E.P.R.No.13 of 2009 in M.C.O.P.No.199 of 1997 on the file of the Sub Court, Tiruchengode.

For Petitioners : Mr.M.Guruprasad

For R1 : No appearance

For R2 : Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 12.12.2012 made in E.P.R.No.13 of 2009 in M.C.O.P.No.199 of 1997 on the file of the Sub Court, Tiruchengode.

2.The petitioners filed claim petition, M.C.O.P.No.199 of 1997, claiming compensation of Rs.2,00,000/- for the death of their son, one Senthilkumar against the respondents. By the order dated 05.10.1998, the said M.C.O.P was ordered, granting compensation to the petitioners. The respondents did not pay the award amount. The petitioners filed E.P.R.No.13 of 2009 for arrest of the respondents. After issue of arrest of warrant, the second respondent was apprehended and produced before the Court on 26.03.2012. He paid a sum of Rs.70,000/- and he was released on execution of sureties for Rs.30,000/- on or before 20.04.2012. Subsequently, he could not be arrested and Executing Court dismissed the E.P on 12.12.2012, on the ground that judgment debtor not found for arrest.

3.Against the said order of dismissal dated 12.12.2012 made in E.P.R.No.13 of 2009 in M.C.O.P.No.199 of 1997, the present Civil Revision Petition is filed by the petitioners.

4.Heard the learned counsel for the petitioners and perused the materials available on record. Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

5.The reasoning of the Executing Court for dismissing E.P.R is erroneous and the learned Judge has committed an irregularity in dismissing the E.P without applying his mind to the facts of the case. The second respondent, after arrest, on payment of Rs.70,000/- was released on furnishing surety for a sum of Rs.30,000/. The learned Judge ought to have called upon the sureties to produce the second respondent or to pay the amount as per the surety given by them. It is pertinent to note that the first respondent has filed I.A.No.518 of 2009 and also filed the Civil Revision Petition when E.P.R was dismissed for non-prosecution. This clearly shows that the respondents are available in the said locality. In view of the above fact, the impugned order of the learned Judge dated 12.12.2012 made in E.P.R.No.13 of 2009 in M.C.O.P.No.199 of 1997 is set aside and E.P.R is restored to file. The learned Judge is directed to proceed with E.P.R against the respondents as well as invoking the sureties.

6.With the above direction, this Civil Revision Petition is allowed. No costs.

06.02.2018

Index :: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

The Sub Judge,
Tiruchengode.



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