

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(NPD).No.2238 of 2004

S.Durairaj

...Petitioner

Vs

1.M.Raju

2.The Medical Officer,
Primary Health Centre,
Devoor, Edapady,
Sankari Taluk

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 C.P.C to allow the above C.R.P and set aside the order and decretal order dated 23.09.2003 made in R.E.A.No.469 of 2002 in R.E.P.No.121 of 1998 in O.S.No.449 of 1997 on the file of the Additional District Munsif, Namakkal.

For Petitioner : Mr.T.Dhanya Kumar

For Respondents : Mr.P.Muthukumaraswami for R1
Mr.K.G.Vasudevan for R2

ORDER

This civil revision petition has been filed to set aside the order and decretal order dated 23.09.2003 made in R.E.A.No.469 of 2002 in R.E.P.No.121 of 1998 in O.S.No.449 of 1997 on the file of the Additional District Munsif, Namakkal.

2. The decree holder is the revision petitioner in the above civil revision petition. This civil revision petition is directed against the order passed in R.E.A.No. 469 of 2002 in R.E.P.No.121 of 1998 on the file of the Additional District Munsif Court, Namakkal, dismissing the application filed by the civil revision petitioner under Order XXI Rule 46 - A of CPC to restrain the second respondent/garnishee to pay the decree amount in the place of the judgment debtor.

3. In the affidavit filed in support of this petition, the

revision petitioner has contended that he had obtained a pro-order against the judgment debtor, in and by which the second respondent was directed to deduct a sum of Rs.1550/- p.m from the salary payable to the first respondent on 13.08.1999. Thereafter, despite forwarding the said order, the second respondent has not taken any steps to recover the amount from the salary of the first respondent.

4. In view of the contumacious conduct of the second respondent, the petitioner has filed contempt proceedings in R.E.A.No.4 of 2002. When the contempt petition was posted on 02.09.2002, on account of boycott by the advocates the said petition was dismissed.

5. The revision petitioner therefore contended that on account of indifference displayed by the second respondent, the pro-order obtained by him could not be given effect to and therefore the impugned application came to be filed.

6. The second respondent filed his counter in which he contended that the first respondent was in their employment only till 15.07.2002 and with effect from 16.07.2002, he has been transferred to Erode District and therefore the petitioner ought to take steps to implead the new employer.

7. The learned Additional District Munsif, Namakkal, after hearing both parties, dismissed the application stating that the remedy of the civil revision petitioner is only to implead the new employer, as the first respondent is no longer an employee of the second respondent and no order can be passed against the second respondent.

8. Mr.T.Dhanya Kumar, learned counsel appearing on behalf of the civil revision petitioner would contend that it is only on account of indifference displayed by the second respondent that the salary of the second respondent could not be attached, which has caused a loss to the decree holder, who had obtained a pro-order.

9. It is no doubt to true that an order under Order XXI Rule 46 - B of CPC can be issued against garnishee for non-compliance of the decree. However, in the instant case, it is seen that the decree holder/petitioner, who had taken steps to proceed in contempt against the second respondent, has not proceeded to restore the contempt petition, which has been dismissed for default that apart the judgment debtor/first respondent has ceased to be an employee of garnishee from 15.07.2002. Therefore, no orders can be passed against the second respondent.

10. I find no merits in this civil revision petition. Consequently, the civil revision petition stands dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

dh

To

The Additional District Munsif,
Namakkal.

Copy To

The Section Officer,
VR Section,
High Court, Madras.(2 Copies)

+1cc to Mr.T.Dhanya Kumar, Advocate SR.No.38857

+1cc to Mr.P.Muthu Kumarasamy, Advocate SR.No.39405

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KS(CO)
GN(03/07/2018)

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