



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.08.2018
DELIVERED ON : 19.09.2018

WEB COPY

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THE HONOURABLE MRS.JUSTICE R.THARANI

C. R.P. (NPD) (MD) No.1067 of 2015
and
M.P. (MD) No.1 of 2015

Gopalakrishnan

.. Petitioner

Vs.

Sri Visalam Chit Funds,
Thanjavur Rep. By its Foreman,
Nalliah Complex,
Chidambaram

.. Respondent

Prayer : This Civil revision petition is filed under Section 115 of C.P.C., to set aside the order dated 04.01.2014 passed in E.A.No.63 of 2013 in E.P.No.13 of 2005 in award No.89 of 2004 on the file of the District Munsif cum learned Judicial Magistrate, Papanasam.

For Petitioner : Mr.N.Shanmugaselvam
For Respondent : Mr.T.R.Subramanian

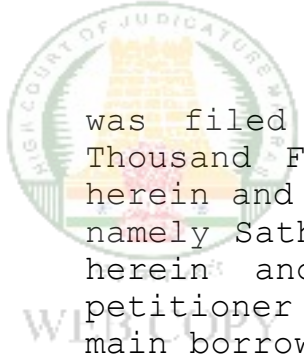
ORDER

Heard Mr.N.Shanmugaselvam, learned counsel appearing for the petitioner and Mr.T.R.Subramanian, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the order dated 04.01.2014 passed in E.A.No.63 of 2013 in E.P.No.13 of 2005 in award No.89 of 2004 on the file of the District Munsif cum learned Judicial Magistrate, Papanasam.

3.The petitioner is the Judgment Debtor and the respondent filed a suit against the petitioner in Award No.89 of 2004 before the Registrar of Chits, Thanjavur and he ordered to pay a sum of Rs.45,593/- (Rupees Forty Five Thousand Five Hundred and Ninety Three only) with 24% interest. Execution Petition in E.P.No.139 of 2005 was filed. The petitioner filed an application before the learned District Munsif, Pappanasam in E.A.No.63 of 2013 to reduce the interest from 24% to 6%. The petition was dismissed on the ground that execution Court cannot go beyond the decree.

4.On the side of the petitioner, it is stated that the case

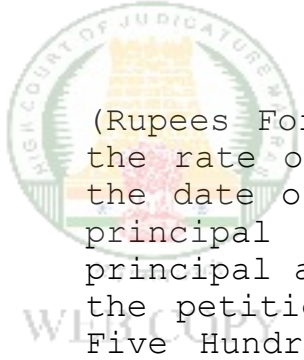


was filed claiming an amount of Rs.54,567/- (Rupees Fifty Four Thousand Five Hundred and Sixty Seven only) from the petitioner herein and from another person. It is stated that another respondent namely Sathyavani has withdrawn the chit amount from the respondent herein and this petitioner stood only as a guarantor. This petitioner has deposited the title deeds of his property, as the main borrower committed default in repayment. The Chit Company filed a case before the Tribunal claiming a sum of Rs.36,166/- (Rupees Thirty Six Thousand One Hundred and Sixty Six only). At the end of the trial, the Registrar awarded Rs.45,593/- (Rupees Forty Five Thousand Five Hundred and Ninety Three only) payable to the the chit fund. The Registrar has passed an order for interest at the rate of 24% after including the interest with the principal amount. As the main borrower has not paid the amount, the petitioner herein is paying the amount from 10.12.2012 and so far the petitioner has paid Rs.52,250/- (Rupees Fifty Two Thousand Two Hundred and Fifty only). On 04.01.2013 the respondent herein has filed a calculation memo calculating 24% as interest. The petitioner has paid Rs.72,000/- (Rupees Seventy Two Thousand only). Even after the date of filing of calculation memo, the petitioner has paid Rs.3,500/- (Rupees Three Thousand and Five Hundred only). The rate of interest should be only 6% from the date of decree and prayed to allow the petition.

5.On the side of the respondent, it is stated that it is only a mortgage suit decreed on 27.09.2004 by the Registrar of chits, Thanjavur and the award amount is Rs.36,166/- (Rupees Thirty Six Thousand One Hundred and Sixty Six only). Section 34 of Civil Procedure Code is not applicable to the present case as the entire transaction is based on the agreement. The agreement is that the petitioner has to pay 24% as interest. The petitioner has not filed any appeal. The execution Court cannot go beyond the scope of the decree and it is prayed to dismiss the petition.

6.On the side of the petitioner, it is stated that as per Section 34 of Civil Procedure Code, the Court can fix the rate of interest to 12% from the date of suit till the date of decree and fixing the same as 6% on the principal amount alone from the date of decree till the date of realization. In support of his contention, the Judgment passed by this Court in the case of **City Theatres Pvt. Ltd., v. Sureshkumar G. Nichani** reported in (2008) 6 MLJ 528 is cited.

7.Records perused. A perusal of the records reveals that the petitioner is the guarantor and the petitioner is liable to repay the loan amount and the respondent obtained a decree against the petitioner before the Registrar, Thanjavur. These facts are not denied by the petitioner and the respondent herein. The respondent filed an execution petition in E.P.No.139 of 2005, before the learned District Munsif, Pappanasam and the petitioner herein filed an application in E.A.No.63 of 2013 before the learned District Munsif, Pappanasam to reduce the interest rate. A perusal of the records reveals that the Registrar awarded a sum of Rs.45,593/-



(Rupees Forty Five Thousand Five Hundred and Ninety Three only) at the rate of interest 24% from the date of filing of the case till the date of realization. A perusal of the records reveals that the principal amount along with the interest was also taken as the principal amount and for both the principal amount and the interest, the petitioner has to pay Rs.45,593/- (Rupees Forty Five Thousand Five Hundred and Ninety Three only) interest at the rate of 24% from the date of filing of the case till the date of realization.

8.The Execution Court cannot go beyond the scope of the decree, but the records reveals that the petitioner has not approached the State for the revision of the interest and the petitioner has not filed any appeal against the order of the award. In the above circumstance, there is nothing wrong in the order passed by the Executive Court but a perusal of the records reveals that the interest till the date of filing of the suit is also taken as principal amount. Filing an appeal will cause further delay. There is an apparent mistake in including the interest amount with the principle amount and to impose interest for that sum. Hence award is to be amended as the interest is to be calculated only for a sum of Rs.36,166/- (Rupees Thirty Six Thousand One Hundred and Sixty Six only). The Civil Revision Petition is disposed of accordingly. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Munsif cum Judicial Magistrate,
Papanasam.

Copy To:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.T.R.SUBRAMANIAN, ADVOCATE IN SR No. 85017

MRN

TE/BK/SAR-2 : 07/12/2018 : 3P/5C

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