



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.01.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD)No.890 of 2011 (PD)

and

M.P. (MD)No.1 of 2011

P.Packiam,
Chief Engineer,
National Highways,
Chennai.

... Petitioner/4th Respondent
(Proposed Party in I.A.No.1015 of 2010)/
Non party/Non party

vs.

1.Bhagavandass

... 1st Respondent/Petitioner/
Petitioner/ Plaintiffs

2.John Berkman

... 2nd Respondent/ 1st Respondent/
1st Respondent/Defendant

3.Divisional Engineer,
Highways, Madurai Division,
Gandhinagar, Madurai-20.

...3rd Respondent/ 2nd Respondent/
2nd Respondent (Garnishee)

4.Superintending Engineer(Special)
Madurai Circle Office,
National Highways Office,
Western side of Madurai District Court,
Vinayaga Nagar, Madurai.

...4th Respondent (Garnishee)

PRAYER: Petitions filed under Section 227 of Constitution of India,
praying to set aside the fair and Ex-Order dated 08.02.2011 passed
in I.A.No.1015 of 2010 in I.A.No.896 of 2007 in O.S.No.1390 of 2006
by the Additional District Munsif Court, Madurai Town.

For Petitioner : Mr.S.Pugalenth
Additional Advocate General
assisted by Mr.A.Thiyagarajan,
Government Advocate

For Respondents : No Appearance

ORDER

This Civil Revision petition has been preferred against the order dated 08.02.2011 passed in I.A.No.1015 of 2010 in I.A.No.896 of 2006 in O.S.No.1390 of 2006.

2.The first respondent / plaintiff filed a suit in O.S.No.1390 of 2006 seeking the relief of recovery of a sum of Rs.33,966/- from the second respondent herein and consequently directing him to pay the interest at the rate of 1% for the principal amount of Rs.20,000/- from the date of plaint.

3.The petitioner is a Chief Engineer of National Highways Department. Execution petition was filed by the first respondent against this petitioner.

4.No representation for the respondents 1 and 2.

5.I.A.No.1015 of 2010 was filed under Order 1 Rule 10 and Section 151 of CPC to implead the proposed party namely the Chief Engineer, Highways Department, Chennai, as 4th respondent in I.A.No.896 of 2007. I.A.896 of 2007 was filed seeking action for contempt committed by the 2nd respondent office, who is the Garnishee. This impleading petition was filed to implead the proposed party as 4th respondent who held the 2nd respondent office at the time of commission of the alleged contempt.

6.It is the objection of the petitioner that the 4th respondent Chief Engineer is unnecessary party because in the official capacity as Chief Engineer, he has acted alone and the loan obtained by the second respondent herein only on his individual capacity. The Trial Court directed the third respondent herein to attach Rs.75,433/- from the retiral benefits of first respondent. The order of attachment dated 10.05.2007 was received by the office on 15.05.2007. The date of retirement of the respondent is 31.01.2007. But the High Court has directed to pay the entire retirement benefits to the second respondent herein and the same was not obeyed by the third respondent. The grievance of the petitioner / 4th respondent is that the 2nd respondent cannot be described by his designation instead of naming him. The amount was disbursed on 24.07.2008, after getting legal opinion. Hence, the order of the Trial Court holding that the proposed party is a necessary party to the petition in I.A.No.896 of 2006 seeking action for contempt and the petition was allowed against which this Civil Revision Petition has been preferred.

7.Stay was also granted on 27.04.2011. Now, the petitioner has argued that this petitioner cannot be impleaded on his individual capacity while his action was in the official capacity and regarding the disbursement of the DCRG only after obtaining legal opinion that was disbursed. However, the status of the execution petition was called for by the Registry and it is informed that E.P.70 of 2007 in



O.S.No.611 of 2005 was already dismissed. Hence, this petition has become infructuous and accordingly the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

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Sub Assistant Registrar

To
The Additional District Munsif,
Madurai Town.

Copy to:

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

+1CC to the Special Government Pleader SR.No.44541

C.R.P. (MD) No.890 of 2011 (PD)
and

M.P. (MD) No.1 of 2011
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das
AM/SV MMS/SAR 3/24.05.2018/3P/5C