

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.1 of 2013
and
C.R.P. (NPD) .No.522 of 2013

C.M.A.No.1 of 2013:

1.H. Narayanan
2.H. Jayanth

... Appellants/Petitioner

Vs

Shriram City Union Finance Limited,
Branch Office NO.167-168,
Nehru Street, II Floor,
India Tower, Villupuram. ...Respondent/Respondent

C.R.P. (NPD) .No.522 of 2013:

1.H. Narayanan
2.H. Jayanth

... Petitioners/Respondents

Vs

1.Shriram City Union Finance Limited,
Branch Office NO.167-168,
Nehru Street, II Floor,
India Tower, Villupuram. ... Respondent/Petitioner

2.N. Devpen

...Respondent/Respondent

(Respondent 2 is given up as she remained ex parte)

Prayer in C.M.A.No.1 of 2013: Civil Miscellaneous Appeal is filed under Order 41 Rule 1 of the Code of Civil Procedure against the fair and decreetal orders dated 09.07.2012 passed in E.A.No.64 of 2011 in E.P.No.69 of 2010 in ACP No.217 of 2010 on the file of the learned Principal District Judge, Villupuram.

Prayer in C.R.P. (NPD) .No.522 of 2013:

Petition filed under Section 115 of the Code of Civil Procedure against the fair and the decreetal order dated 09.07.2012 passed in E.P.No.69 of 2010 in ACP.No.217 of 2010 on the file of the learned Principal District Judge, Villupuram.

For Appellant : Ms.R. Meenal
in both cases

For Respondents : Mr.K.V. Ananthakrishnan
in C.M.A.No.1 of 2013
and for R1 in
C.R.P. (NPD) .No.522 of 2013

R2 - given up in
C.R.P. (NPD) .No.522 of 2013

COMMON JUDGMENT

Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 09.07.2012 in E.A.No.64 of 2011 in E.P.No.69 of 2010 in A.C.P.No.217 of 2010 passed by the learned Principal District Judge, Villupuram, by raising various grounds.

2.Civil Revision Petition has been filed against the fair and decreetal order dated 09.07.2012 in E.P.No.69 of 2010 in A.C.P.No.217 of 2010 passed by the learned Principal District Judge, Villupuram, by raising various grounds.

3.Since the issue involved in both the appeal as well as in revision are one and the same they are taken up together and a Common Judgement is passed.

4.The case of the respondent/claimant before the Arbitrator was that the 1st appellant herein had availed trade loan for Rs.25,00,000/- and the 2nd appellant and the 2nd respondent stood as guarantors. The appellants herein promised to pay the sum and also entered into a loan agreement towards the loan availed by the 1st appellant. The Agreement No.ISNRTFVL01619E/07 was entered on 01.09.2007 and as per the terms and conditions, the appellants has agreed to repay the amount borrowed in 33 equated monthly instalments of Rs.1,01,750/- from 10.10.2007. The appellants had also executed a Promissory Note and post dated cheques in favour of the respondent. In the event of cheques being dishonoured, the appellants are liable to pay the charges on the above and the late payment charges @3% per month on the entire outstanding amount to be paid till the date of receipt.

5.It is the further case of the respondent/claimant that on 20.02.2010, the respondents/appellants are liable to pay Rs.24,38,000/- towards Principal, Rs.7,65,968/- towards interest and Rs.27,000/- towards bank charges and Rs.6,58,414/- for future instalments totalling a sum of Rs.38,89,382/-. Since the appellants have committed default

in payment, the loan agreement was foreclosed and the entire amount was directed to be paid by the appellants. But, the appellants did not pay the amount. Hence, the respondent had filed a claim petition before the Arbitrator, as per the terms and conditions, dated 01.09.2007, for a sum of Rs.38,89,382/- with interest @36% per annum with costs.

6.It was the further case of the respondent/claimant that the appellants/respondents herein had evaded to receive notices and the same were returned and the appellants were called absent and set ex parte and the said Arbitrator has passed an Award directing the appellants herein to pay a sum of Rs.38,89,382/- along with interest @18% per annum and the cost of Rs.20,500/- towards arbitration proceedings. After the said Award being passed by the Arbitrator, the respondent herein had filed E.P.No.69/2010-ACP.No.(SCUF)ASN (VLB)/217/2010, in the Execution Petition, the prayer for

attaching the schedule mentioned property Item - 1, 2 and 3 which are as follows:

The Schedule above referred to

In Villupuram Registration District,
Villupuram Joint-II Sub Registration District,
Pidagam Village of Villupuram Taluk.

All piece and part of land in
S.No.381/9b, about 0.04 acre out of 0.30 acre
with total area 1744 square feet within the
following boundaries:

East of Pachiyappa Chettiar's remaining
extent land, South of Road, West and North of
N.Jayanth's property.

Item No.2: All piece and part of
land in S.No.381/8B (It relates to New
S.No.381/9B2).

About 0.2 acre out of 0.17 acre out of
0.30 acre with total Area of 872 square feet
within the following boundaries:

West of Murugadoss's site, East of
P.Kothandapani's Site, South of Road and North
of N. Jayanth's land.

Item No.3:

All piece and part of land in
S.No.381/10-0.32 acre out of 0.92 acre with
total area of 13952 square feet. (Its
S.No.381/10D) with the following boundaries.

North of Azhangal Channel, West of
Kalivaradan's Land, East of Yasodha Ammal's land
and South of N. Jayanth's land."

7.In that, the appellants herein had taken out an
application for setting aside the ex parte decree. In the
said Execution Petition, they pleaded that they were paying

the amount in part and on 09.11.2011, they were supposed to pay the said part amount. At that time, the appellant herein were gone to bring their counsel. In the meanwhile, the Court has called them and they were set ex parte and an order of attachment was passed. They have also filed a petition for setting aside the ex parte order under Section 151 of the Code of Civil Procedure and the same was returned and also contended that they were ready to pay a sum of Rs.50,000/- in the said proceedings and prayed to allow the same.

8. On 09.07.2012, the learned Principal District Judge, Villupuram, has directed the appellants herein to pay $\frac{1}{4}^{\text{th}}$ of the amount demanded and if the appellants have not paid the said amount by 14.08.2012, the order of attachment will be passed and thereafter, the properties shall be attached. Against the said order, the appellants have filed E.A.No.64 of 2011. In view of the order passed in Execution Petition, nothing survives on E.A. and hence, the learned Principal District Judge, dismissed E.A.No. 64 of 2011. Even though it is an cryptic order, the appellants herein had filed Appeals. Against the order passed in E.P.No.69 of 2010 in A.C.P.No.217 of 2010 dated 09.07.2012, the appellants herein had filed C.R.P.No.(NPD).522 of 2013. Against the order dated 09.07.2012 in E.A.No.64 of 2011 in E.P.No.69 of 2010 in A.C.P.No.217 of 2010, the appellants have filed Civil Miscellaneous Appeal in C.M.A.No.1 of 2013 and both the cases were clubbed together for hearing.

9. The learned counsel for the appellants submitted that the Court below ought to have disposed of E.A.No.64 of 2011 before taking up the Execution Petition which has been filed for setting aside the order of attachment and the respondent had not even filed his counter in the said application. The order passed in the Execution Petition is a non speaking order and dismissing the E.A.No.64 of 2011 which is only a consequential application is also erroneous, and the order of the Court below shows totally a non application of mind. Further, the appellants had made substantial payments towards the decree amount and no opportunities were given to the appellants herein to substantiate their case.

10. The learned counsel for the respondent/claimant submitted that the appellants were paying the amounts in part and more opportunities were given to pay the balance amount, however, the appellants have not taken any steps to pay the amount for a long time and Rs.24,38,000/- towards Principal was due on 20.02.2010 with 18% interest and the amount payable by the appellants was Rs.38,89,382/- in the year 2010 and they are unable to make the payments in the E.P. Court on 09.07.2012 and came forward to offer a sum of Rs.40,00,000/- and the same was accepted by the learned counsel for the respondent as full and final settlement and further, had granted time to pay the said amount. This Court has also adjourned the matter on the promise made by the appellants

that they would pay Rs.40,00,000/- to the respondent and this Court directed the appellants to pay the amount of Rs.60,00,000/- by way of Demand Draft on or before 14.10.2019. Earlier, the learned counsel for the respondent had submitted to this Court that instead of Rs.40,00,000/-, Rs.60,00,000/- was directed to pay. Hence, these matters were again adjourned to 06.11.2019 and even till date, no amount has been paid by the appellants.

11. Heard the learned counsel for the appellants and the learned counsel for the respondent and carefully considered the materials available on record.

12. When the Court below has directed the appellants herein to pay 1/4th of the claim amount i.e., at least Rs.40,00,000/- the same was not paid by them and they also informed this Court that they are unable to pay the same. The learned counsel for the respondent/claimant submitted that the Award was passed in 2010 and nearly for a decade, they are unable to pursue the matter and release the amount lent to them. It is submitted that the appellants herein have no money to pay the said Award amount and she prayed that this Court should consider of paying the same by way of monthly instalment.

13. This Court is not inclined to accept the case and the contention of the appellants before the Arbitrator, the appellants have remained ex parte and also before the E.P. Court, even though they filed their counter they did not appear and an order of attachment was passed against them. Thereafter, the appellants have appeared and tried to convince the Court and further, they represented that they are ready to pay some amount. In consequence, this Court directed the appellants to pay 1/4th amount demanded by the respondent and that amount was not paid and hence, Execution Petition was allowed and consequential E.A. was dismissed. Thereafter, the appellants have not paid the amount till date and when the matter was taken up for hearing, before this Court on 21.01.2013, the learned counsel for the appellants had submitted that they are ready to pay Rs.5,00,000/- within a period of eight weeks and the same was recorded, but nothing has been found in the record to show that atleast the said amount has been tendered to the 1st respondent herein. Even this Court and the Courts below has given several opportunities to pay the amount, which were borrowed by the appellants, they have not kept their promise before this Court as well as the Courts below.

14. In view of the conduct of the appellants, this Court is not inclined to accept the contentions made by the learned counsel for the appellants, the appellants have borrowed the amount and an Award has been passed by the

Arbitrator and also Execution Petition has been allowed and further, the order of attachment of the property has been passed, hence, this Court is of the view that the appellants are liable to pay the same to the respondent and the only way for the respondent to recover the same, would be, by selling the attached property and recovered the money, which is due to them.

Accordingly, this Civil Miscellaneous Appeal is dismissed. In view of the dismissal of Civil Miscellaneous Appeal, this Civil Revision Petition is also dismissed. No Costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mps

To

1.The Deputy Commissioner of Labour-I,
Chennai.

2.United India Insurance Company Limited,
A5 & A6, II Floor,
No.27, Appasamy Towers,
Sir Thiagaraya Road,
Near Nagesh Theatre,
T. Nagar, Chennai - 600 017.

+1cc to Ms.R. Meenal, Advocate SR.No.92256

+1cc to Mr.K.V. Ananthakrishnan, Advocate SR.No.92267

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and
C.R.P. (NPD) .No.522 of 2013

PP (CO)
GMY (09/11/2020)