

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3328 of 2012 and  
M.P.No.1 of 2012

R.Sabariammal ... Petitioner

Vs.

1. Sriram City Union Finance Ltd,  
No.7-9, Bharathi Street,  
P.R.Complex, Cuddalore.

2. C.B.Senthilkumar

3. K.Ramesh ... Respondents

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 05.07.2012 passed in E.P.No.37/2011 in A.R.No.135 of 2010 by the I Additional Subordinate Judge, Cuddalore.

For Petitioner : Ms. N.Chandra  
For Respondents : Mr.K.V.Ananthakrishnan (for R1)  
No appearance for R2 and R3

**ORDER**

The civil revision petitioner is the 2nd respondent in E.P.No.37 of 2011 in A.R.No.135 of 2010 on the file of the I Additional Subordinate Judge, Cuddalore. The first respondent/Sri Ram City Union Finance Limited filed the above execution petition for attachment of salary of the present revision petitioner under Order XXI Rule 11(2) of the Code of Civil Procedure for realisation of the decretal amount. The I Additional Subordinate Judge, Cuddalore vide his orders dated 05.07.2012 at paragraph No.7 has held thus.

*7. The petitioner states that this execution petition arose from award T.C.No.13/10 dated 12.11.2010. The 2nd respondent who stood as surety to the bidder/first respondent. The 2nd respondent is working as Office Assistant at Panchayat Union, Kolliayanur, Villupuram District. The 2nd respondent filed her counter by stating that the first respondent is having sufficient means to repay the balance amount and further, by way of additional counter, has stated that she can pay the amount in installments to the tune of Rs.2,000/- per month. It is to state that it is, an execution petition. arose from a decree directing the*

*respondents to pay the award amount and there is no direction to pay the award amount by installments or the decree holder is consenting for payment on installments. Hence, it is felt that there is no impediment in ordering for attachment. Hence, attachment of salary of 2nd respondent is ordered, subject to law. Batta in 3 days. Call on 21.08.2012."*

Aggrieved over the orders passed by the I Additional Subordinate Judge, Cuddalore, the 2nd respondent in E.P.No.37 of 2011 filed the present revision petition.

2. The main contention of the revision petitioner is that since she is only a surety, the decree holder cannot file the execution petition against her alone for realizing the decretal amount.

3. The first respondent/ Sri Ram City Union Finance Limited has objected this contentions. The principal debtor C.B.Senthilkumar obtained a loan of Rs.2,00,000/- from the Sriram City Union Finance Limited by executing a promissory note in their favour. According to the first respondent, the borrower had to repay the said amount in instalments commencing from 10.01.2010. Since the borrower did not pay any amount,

either towards principal or interest, the loan agreement was foreclosed. According to the first respondent, as on 16.09.2010, a sum of Rs.2,22,000/- was due and payable by the principal debtor. The present revision petitioner and one K.Ramesh stood as surety to the loan transaction. In the arbitration proceedings, an award was passed on 12.11.2010 directing the principal debtor and the sureties to pay the principal amount together with interest at 18% from 29.06.2010 till the date of realization and also a sum of Rs.750/- towards the cost of arbitration within a period of 30 days from the date of passing of the award. The first respondent / Sri Ram City Union Finance Limited filed E.P.No.37 of 2011 for attachment of the salary of the surety Sabarimmal (present revision petitioner).

4. Denying the liability to pay the amount, the civil revision petitioner contended that the Sri Ram City Union Finance Limited, ought to have proceeded only against the principal debtor, who had committed default in payment of instalments.

5. As per Section 128 of the Contract Act, the liability of the surety is co-extensive with that of the principal debtor. The sureties are liable to pay the entire amount and their liability is immediate. In the absence of some special security, the surety has no right to restrain the

action taken by the creditor on the ground that the principal is solvent or that the creditor may have relief against the principal debtor in some other proceedings. However, in certain cases, for sufficient reasons, the court may direct for postponing the payment of the decretal amount by the surety but for issuance of such directions, there has to be sufficient and reasonable grounds.

6. As far as the present case is concerned, no sufficient and reasonable grounds are made out by the revision petitioner for issuance of such directions to postpone the payment of decretal amount by the sureties/guarantors. Therefore, the contention of the revision petitioner that the creditor can only proceed against the principal borrower cannot be sustained.

7. A perusal of the orders dated 05.07.2012 passed by the I Additional Subordinate Judge, Cuddalore shows that the learned Judge has not indicated the amount which has got to be attached in the salary of the 2nd respondent/revision petitioner. More over, the revision petitioner in her counter had contended that she is drawing only a sum of Rs.15,000/-per month and after deductions, her take home pay is Rs.9,000/- per month. She further contended that with this meagre amount, she has to maintain

her three minor sons. It is relevant to point out that both the decree holder and the revision petitioner did not file the salary certificate.

8. Mr.K.V.Ananthakrishnan, learned counsel appearing for the first respondent contended that at the time of borrowal of the loan by the principal debtor, the revision petitioner/2nd respondent submitted her salary certificate indicating her salary as Rs.19,000/- per month and therefore, the said amount was indicated in the execution petition itself. He would further contend that the orders passed by the executing court is perfectly in order.

9. As per Section 60(h) of the Code of Civil Procedure, salary to the extent of the first one thousand rupees and two-thirds of the remaining cannot be attached in execution of any decree, other than a decree for maintenance.

10. The learned I Additional Subordinate Judge, Cuddalore has passed a cryptic order by stating that the salary of the 2nd respondent is attached, subject to law. Therefore, the execution petition is liable to be remitted back to the executing court for consideration afresh.

11. In the result,

(i) The execution petition in E.P.No.37 of 2011 is remitted back to the I Additional Subordinate Judge, Cuddalore to dispose of the same afresh, after affording opportunities to both the parties to adduce evidence on their side.

(ii) The I Additional Subordinate Judge, Cuddalore is directed to dispose of the execution petition within a period of two months from the date of receipt of a copy of this order.

12. with the above observations, the civil revision petition is disposed of. No costs. The connected miscellaneous petition is closed.

05.08.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order  
mst

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To

1. The I Additional Subordinate Judge, Cuddalore.

R.HEMALATHA,J.  
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