

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.4625 of 2012
and
M.P.No.1 of 2012

1.S.Lourthusamy

2.M.Vengatesane

... Petitioners

vs.

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

2.V.Rajapoomani

3.R.Mohan

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 08.10.2012 passed in E.P.No.74 of 2012 in TC.No.76 of 2011 on the file of the I Additional Subordinate Judge, Cuddalore.

For Petitioners : Mr.M.Murali

For Respondents : Mr.K.V.Anantha Krishnan for R1
No appearance for R2

ORDER

The revision petitioners are the respondents 2 and 3 in EP.No.74 of 2012 in TC.No.76 of 2011 on the file of the I Additional Subordinate Judge, Cuddalore. The first respondent, the Sriram City Union Finance Limited, No.7-9, Bharathi Street, P.R.Complex, Cuddalore filed the said Execution Petition in order to realise the decreetal amount passed in TC.No.76 of 2011 by a sole arbitrator on 24.08.2011.

2. A perusal of the award passed in TC.No.76 of 2011 shows that the revision petitioners / respondents 2 and 3 who stood as guarantors for the loan obtained by the principal borrower were also made liable to pay the decree amount of Rs.4,06,536/- together with interest at the rate of 18% per annum from the date of passing the award. In the Execution Petition, the decree holder had specifically mentioned that the respondents 2 and 3 are drawing salary of Rs.16,000/- per month and after deducting Rs.1,000/- plus 1/3 of the balance amount, a sum of Rs.5,000/- should be attached from the salary of the respondents 2 and 3. The respondents 2 and 3 in their counter did not deny the fact that they are drawing a salary of Rs.16,000/- per month. Their only contention is that the principal borrower is having

sufficient income to repay the award amount passed in TC.No.76 of 2011 and therefore, the Execution Petition filed against them should be dismissed.

3. The learned I Additional Subordinate Judge, Cuddalore vide his fair and decreetal orders dated 08.10.2012, allowed the Execution Petition by observing that since the liability of the respondents 2 and 3 are joint and several, they are liable to pay the decreetal amount. He therefore, attached the salary of both the respondents. Aggrieved over the same, the present Civil Revision Petition is filed.

4. No appearance on behalf of the second respondent.

5. Mr.M.Murali, learned counsel appearing for the revision petitioners / respondents 2 and 3 contended that the revision petitioners / respondents 2 and 3 are drawing a salary of Rs.13,500/- per month and that after deductions their take home pay is only Rs.9,000/- per month.

6. It is pertinent to point out that this has not been pleaded by the revision petitioners / respondents 2 and 3 in the counter filed by them before the Execution Court. They did not also adduce any evidence to show

that they are actually drawing a salary of Rs.13,500/- per month. Therefore, the orders passed by the learned I Additional Subordinate Judge, Cuddalore cannot be found fault with. Moreover, as per Section 128 of the Indian Contract Act, 1872, the liability of the surety is coextensive with that of the principal debtor. In the absence of any special contract, the surety has no right to restrain an action taken by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some other proceedings. In certain cases, the court may postpone the payment of the decretal amount by the surety. However, for issuance of such directions there must be sufficient and reasonable grounds. In the instant case, since there are no sufficient and reasonable grounds for postponing the payment to be made by the sureties, this court is of the opinion that the revision petitioners / respondents 2 and 3 who stood as guarantors are also liable to pay the decretal amount. In the facts and circumstances of the present case, I do not see any reason to interfere with the findings recorded by the learned I Additional Subordinate Judge, Cuddalore and therefore, the order passed by the learned I Additional Subordinate Judge, Cuddalore is upheld.

7. Accordingly, the present Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

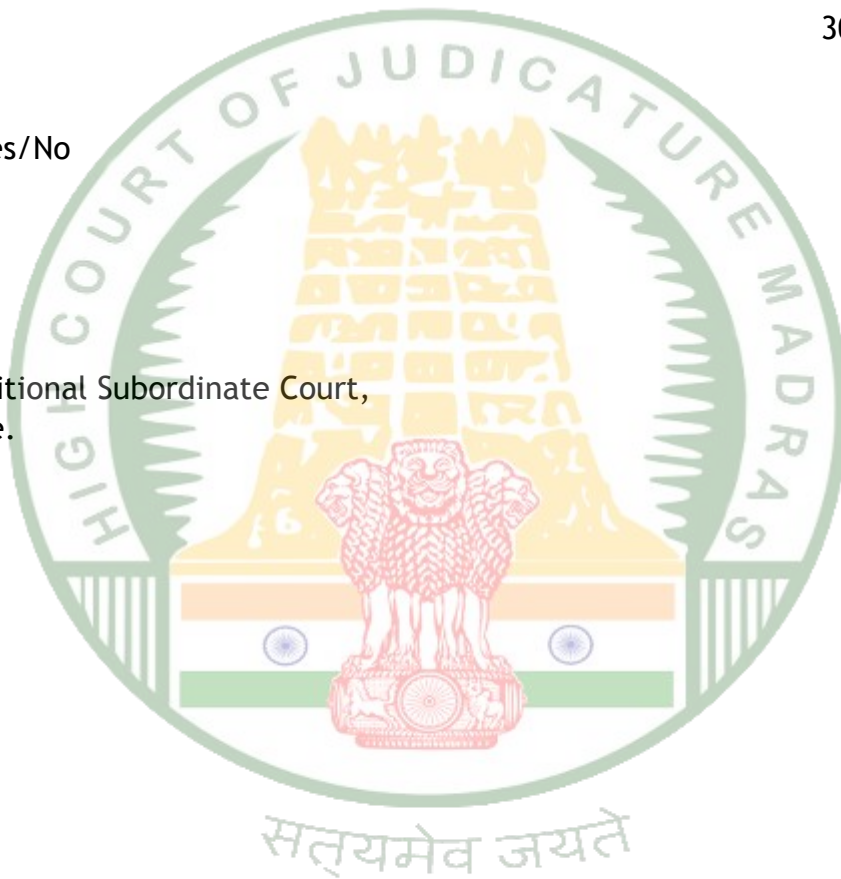
30.08.2019

mbi

Index : Yes/No

To

The I Additional Subordinate Court,
Cuddalore.

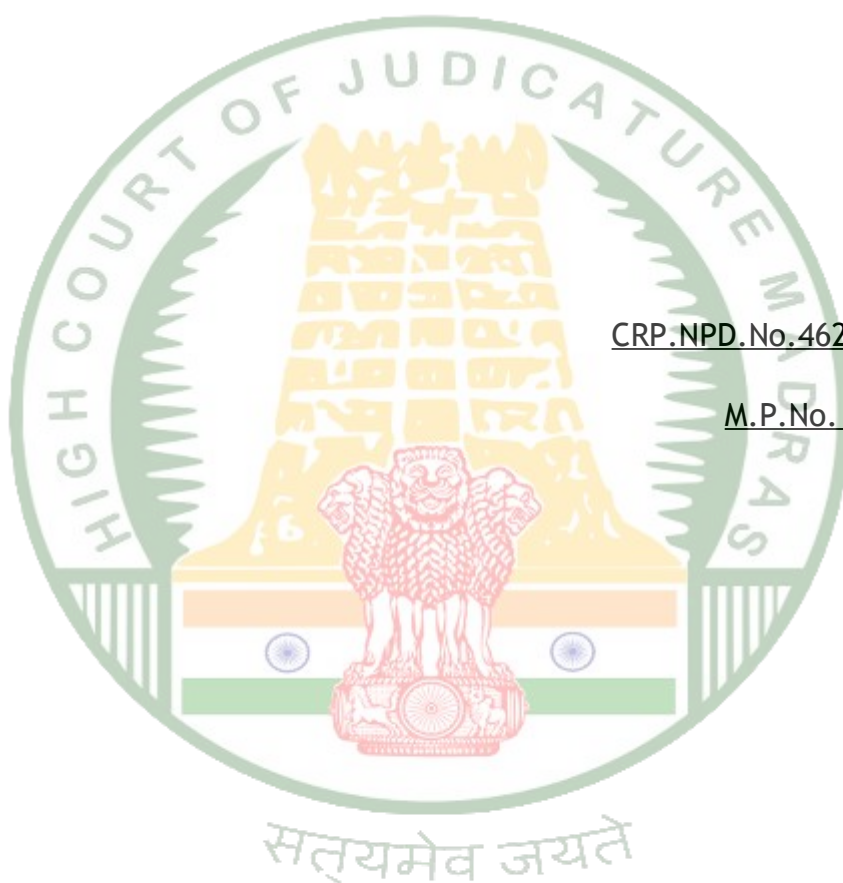


WEB COPY

CRP.NPD.No.4625 of 2012

R.HEMALATHA, J.

mbi



CRP.NPD.No.4625 of 2012
and
M.P.No. 1 of 2012

WEB COPY

30.08.2019