

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.07.2019
Pronounced On	24.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P(NPD)No.934 of 2015
and
M.P.No.1 of 2015

Star Agency
Rep. by P.Vinoth,
No.1194, Range Gowdar Street,
Near Ambika Finance,
Coimbatore.

.. Petitioner

VS

Sri Mahendara Enterprises,
Rep. by its Proprietor Mrs.Padmadevi,
Rep. by her Power of Attorney,
Thiru S.Sanjay Kumar,
D.No.90, 3rd Floor, Thomas Street,
Salisa Tower, Coimbatore.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the Fair and Decretal order dated 09.10.2014 made in E.P.No.3 of 2013 in O.S.No.457 of 2009 on the file of II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : No appearance

ORDER

Though notice has been served on the respondent, there is no representation on behalf of the respondent today, even though the respondent's name is printed in the list. Hence the case was taken up for hearing without the presence of the respondent's counsel.

2. The petitioner is aggrieved by the impugned fair and decretal order dated 09.10.2014 passed by the II Additional Subordinate Judge, Coimbatore (FAC) in E.P.No.3 of 2013 in O.S.No.457 of 2009.

3. By the impugned order the court has allowed an Execution Petition filed by the respondent (decree holder) and has ordered the arrest of the petitioner within seven days of the said order.

4. The petitioner was the sole defendant in the above suit before the said court. The petitioner, however, remained absent and was therefore set exparte. After the suit was decreed on 29.07.2010, the respondent filed E.P.No.3 of 2013 in O.S.No.457 of 2009 before the said court.

5. In the aforesaid proceeding, the petitioner filed a proof

affidavit and disputed his liability on the ground that he was not the

proprietor of the petitioner M/s. Star Agency and that he worked as an employee and that he had also resigned job from the petitioner and thereafter he was working in Chennai.

6. According to the petitioner, he merely represented the judgment debtor M/s. Star Agency as its power agent and therefore the liability cannot be fastened on him.

7. The Execution Court after examining the arguments advanced by the petitioner and on behalf of the respondent has concluded that the contention of the petitioner that he was only a power agent of M/s. Star Agency was without any basis and not sustainable.

8. The court has concluded that the petitioner was trying to prolong the matter by stating an imaginary story. Therefore, unless the petitioner was ordered to be arrested and detained in a civil person, the respondent judgment debtor cannot realise the amount from the petitioner.

9. Aggrieved by the above order of the court in the Execution Petition, the petitioner has filed the present Civil Revision Petition.

10. Heard arguments advance on behalf of the petitioner. The learned counsel for the petitioner submits that M/s. Star Agency is owned by its sole proprietress Smt. Radha Krishnamoorthy and that he had no connection with the said concern except as an employee and therefore the suit was not maintainable against the petitioner. Consequently, the decree was not executable against him.

11. I have considered the arguments advanced on behalf of the petitioner. The petitioner has not participated in the suit and remained exparte. Only during the execution proceeding, he has come up with the defence that he was merely a former employee of M/s. Star Agency whose proprietress was Smt. Radha Krishnamoorthy.

12. Though, it is open for a judgment debtor to raise the defence in the execution proceeding stating that the judgment and decree were inexecutable, in the present case the petitioner has not participated in the suit.

13. In the execution proceeding, he has claimed that he was representing the judgment debtor proprietress Smt. Radha Krishnamoorthy as a power agent. The petitioner has not filed any document to establish the same. He has also not disclosed the

document to establish the same. He has also not disclosed the details of the said Smt.Radha Krishnamoorthy. Therefore, submissions of the petitioner for the 1st time before the Execution Court is without any merits.

14. Even if the petitioner was a power agent of M/s.Star Agency as was claimed, it was open to recover the decreed amount from his principal after satisfying the decree amount to the respondent (decree holder). I, therefore, do not find any reasons to interfere with the impugned order of the Execution Court.

15. Therefore the present Civil Revision Petition is liable to be dismissed. It is noticed that all through the pendency of this Civil Revision Petition, the petitioner had taken adjournment stating that the case would be settled. However, he has not settled the dispute so far.

16. Considering the fact that the petitioner has not been arrested so far, I am of the view that the petitioner can be given an opportunity to pay decreed amount together with interest to the respondent (Decree Holder) within a period of eight weeks from the date of receipt of a copy of this order by depositing the aforesaid amount in the Execution Court. In case the petitioner deposits the

shall not be arrested.

17. The petitioner shall, therefore, deposit the decreed amount together with interest to the credit of the above Execution Petition within eight weeks from the date of receipt of a copy of this order.

18. On such a deposit, the order passed by the Execution Court in impugned order shall stand recalled and formal order shall be passed to close the said Execution Petition.

19. The present Civil Revision Petition stands dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is also closed.

24.07.2019

Index:Yes/No

Internet :Yes/No

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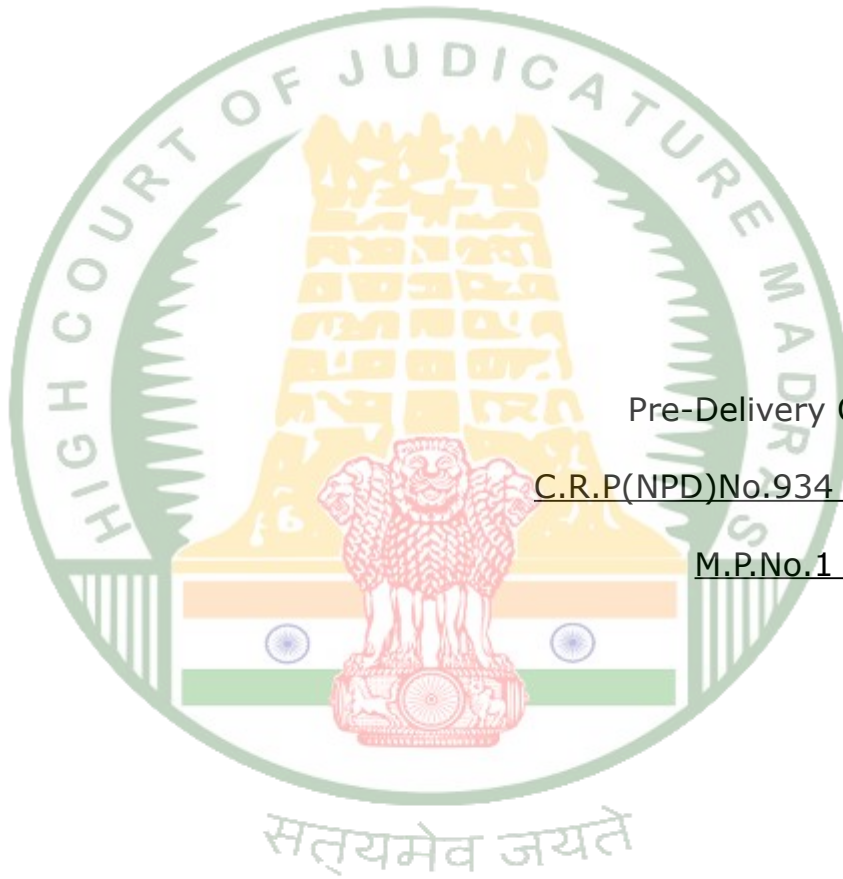
To

1.The II Additional Subordinate Judge,
Coimbatore.

2.The Section Officer, V.R.Section,
High Court, Madras.

C.SARAVANAN, J.

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Pre-Delivery Order in

C.R.P(NPD)No.934 of 2015
and
M.P.No.1 of 2015

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24.07.2019