

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.3252 of 2013
and
M.P.Nos.1 of 2013 and 1 of 2014

T.Raghu

... Petitioner

vs.

1.Shriram Chits Tamil Nadu Pvt. Ltd.,
G.T.Branch, Chennai - 600 001.

2.S.Rani

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 19.06.2013 in EA.No.5378 of 2012 in EP.No.2963 of 2010 on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner

: Mr.M.Ganesh Babu

For Respondents

: Mr.M.Devendran

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ORDER

The revision petitioner is the second respondent / judgment debtor in EP.No.2963 of 2010 on the file of the IX Assistant Judge, City Civil Court, Chennai. The first respondent, Shriram Chits Tamil Nadu Private Limited filed the said Execution Petition against the judgment debtors for realization of the decretal amount passed in ARC.No.793 of 2009 in EP.No.2963 of 2010. The present revision petitioner filed EA.No.5378 of 2012 under Order XVI Rule 1 and 6 r/w Section 151 of Code of Civil Procedure for issuing sub-peona to the Manager, Indian Bank, Erukancherry Branch, Chennai to produce the statement of accounts of the decree holder, which the decree holder is maintaining with the Indian Bank bearing Account No. SB A/c. 428563560.

2. The learned IX Assistant Judge, City Civil Court, Chennai after analysing the evidence on record, dismissed the said application vide his fair and decretal orders dated 19.06.2013. Aggrieved over the same, the present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure.

3. Mr.M.Ganesh Babu, learned counsel appearing for the revision

petitioner contended that the first respondent / Shriram Chits Tamil Nadu Private Limited can proceed against the principal debtor, when the principal debtor has sufficient means to pay the decretal amount and the present revision petitioner who is only a surety should not be made to pay the entire amount. He also pointed out that the executing court dismissed the application mainly on the ground that the decree holder is raising strong objection in allowing the application.

4. *Per contra*, the learned counsel appearing for the respondents contended that the decree holder filed two Execution Petitions one against the principal debtor and another against the sureties including the present revision petitioner. His further contention is that the Execution Petition against the principal debtor is filed for attaching the properties for realization of decretal amount passed against him in ARC.No.793 of 2009. He therefore contended that issuing sub-peona to the Manager, Indian Bank, Erukancherry Branch, Chennai is not necessary in deciding EP.No.2963 of 2010.

5. It is pertinent to point out that the decree in ARC.No.793 of

2009 is passed against the principal debtor as well as the sureties and their liabilities are joint and several. The liability of the surety is co-extensive with that of the principal debtor as per Section 128 of the Indian Contract Act and therefore, the surety cannot contend that the decree holder should proceed against the principal borrower in the first instance. In the facts and circumstances of the present case, issuing sub-peona to the Manager, Indian Bank, Erukancherry Branch, Chennai is not necessary for the decision of the case in EP.No.2963 of 2010 and I also do not see any reason to interfere with the findings recorded by the learned IX Assistant Judge, City Civil Court, Chennai.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

सत्यमेव जयते

21.08.2019

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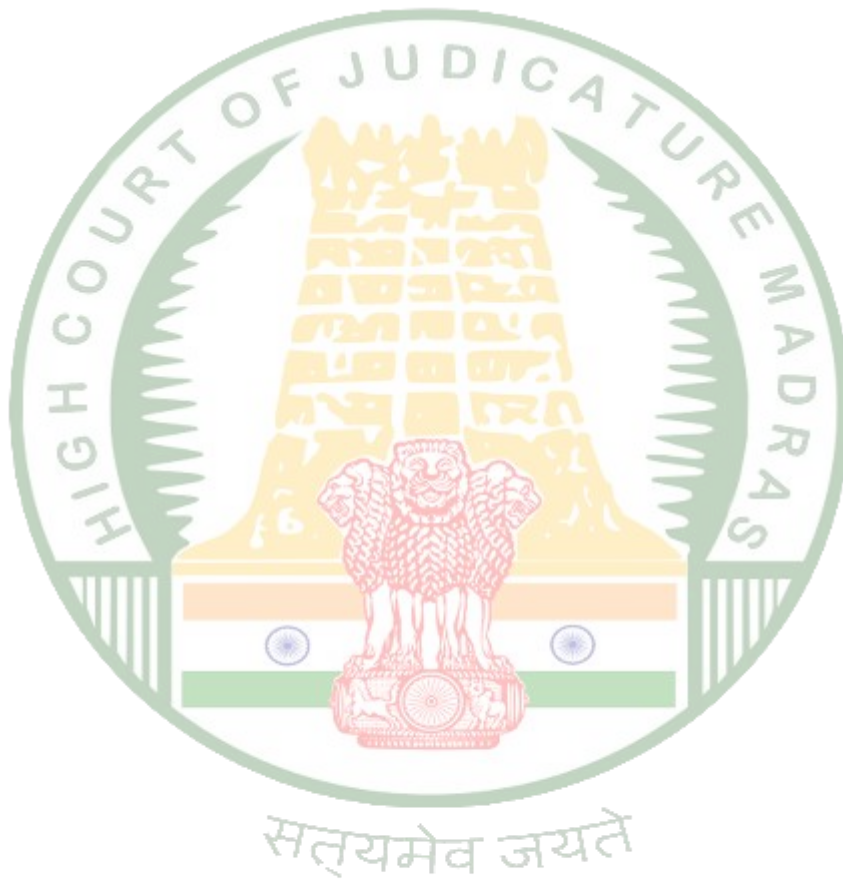
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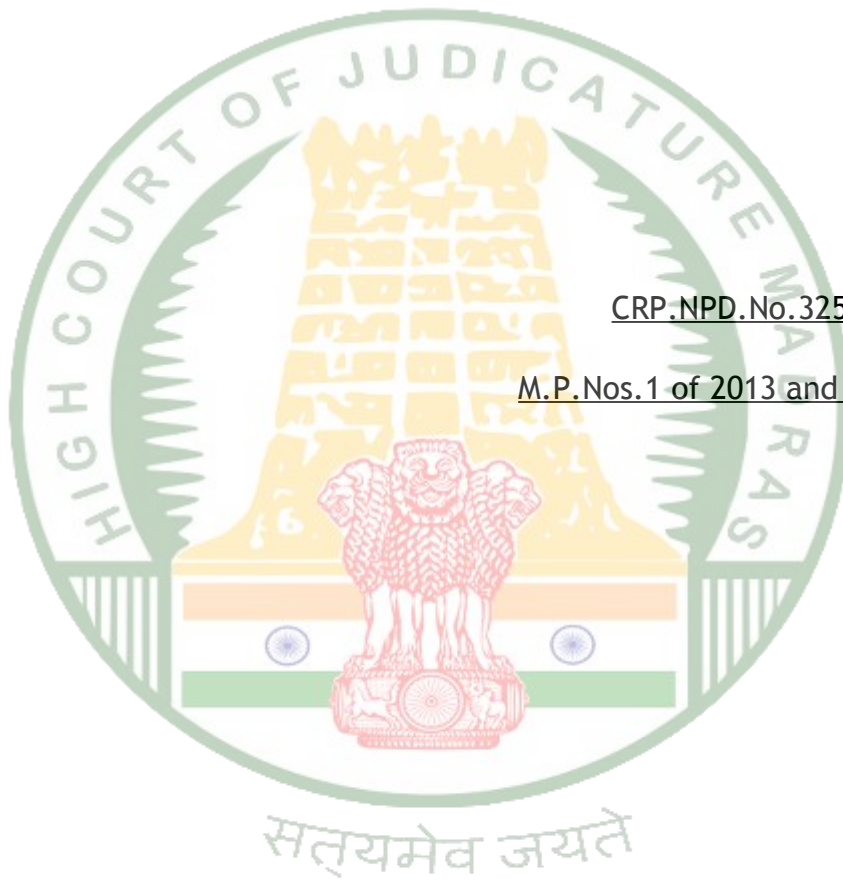
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The IX Assistant Judge,
City Civil Court,
Chennai.



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R.HEMALATHA, J.



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