

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.(NPD)No.3983 of 2013

and

M.P.No.1 of 2013

R.Kalimuthu

... Petitioner

Vs.

1.M/s.Shriram City Union Finance Ltd,
Coimbatore Region,
141/2, First Floor,
Perundurai Road,
Opp. Sakthi Mahal
Erode - 11
Rep. By its authorised signatory
T.Gnanasekaran
Assistant Manager

2.V.Chandrasekar

3.R.Ponnusamy

4.C.Shanthi

... Respondents

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This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 09.04.2013 passed in E.P.No.69 of 2012 in Arb. Cases No.330 of 2010 by the learned First Additional Subordinate Judge, Erode.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.K.V.Ananthakrishnan for R1
No appearance for R2 to R4

ORDER

The present civil revision petition has been filed against the orders dated 09.04.2013 passed in E.P.No.69 of 2012 in Arb. Case No.330 of 2010 by the learned First Additional Subordinate Judge, Erode.

2.The revision petitioner is the 2nd respondent/Judgment Debtor in E.P.No.69 of 2012 in Arbitration Case No.330 of 2010 on the file of the First Additional Subordinate Court, Erode. The first respondent/Decree Holder M/s.Shriram City Union Finance Ltd filed E.P.No.69 of 2012 under Order XXI Rule 11(2) of the Civil Procedure Code read with Section 36 of the Arbitration and Conciliation Act 1996 for attachment of the salary of the respondents 2 and 3 for realisation of the decree amount in Arbitration Case No.330 of 2010. The Judgment Debtor/Civil Revision Petitioner filed a counter in the Execution Petition contending that he did not stand as a guarantor for the loan obtained by the second respondent in the instant petition and that his signature is forged in the loan document. The learned First Additional Subordinate Judge, Erode, after analysing the evidence

on record, allowed the Execution Petition and attached the salary of the present civil revision petitioner to the tune of Rs.2,260/- per month. Aggrieved over the same, the present civil revision petition is filed.

3.Mr.P.Valliappan, learned counsel appearing for the civil revision petitioner contended that since the civil revision petitioner was not served with notice in the Arbitration proceedings and the signature of the civil revision petitioner was also forged in the loan agreement, he is not liable to pay the decretal amount and the orders passed by the learned First Additional Subordinate Judge, Erode is liable to be set aside.

4.Per contra, Mr.K.V.Ananthakrishnan, learned counsel appearing for the first respondent contended that the civil revision petitioner was served with notice in the Arbitration proceedings and that he remained absent and was set exparte. He also contended that the revision petitioner did not file any application under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the Award dated 24.09.2010. Therefore, he prayed for dismissal of the civil revision petition.

5.As rightly pointed out by the learned counsel appearing for the first respondent/decreed holder that the civil revision petitioner did not file any application to set aside the Award passed by the Sole Arbitrator and at the time of filing the Execution Petition, he cannot claim that his signature is forged in the loan agreement. At this stage, the learned counsel appearing for the civil revision petitioner contended that when there are other judgment debtors, the civil revision petitioner's salary alone has been attached. As per Section 128 of the Indian Contract Act, 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. However, for issuance of such directions, there has to be sufficient and reasonable grounds. Since the liability of the guarantor/surety is co-existence with that of the principal debtor and the decree holder can proceed against any one of them. The learned First Additional Subordinate Judge, Erode had also given cogent reasons for allowing the Execution Petition. It is further seen from the records that the civil revision petitioner is

working as a conductor in Tamil Nadu State Transport Corporation and his salary was attached to the tune of Rs.2,260/- per month, I do not find any infirmity in the orders passed by the learned First Additional Subordinate Judge, Erode.

6.In the result, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed

22.08.2019

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

The First Additional Subordinate Judge,
Erode.

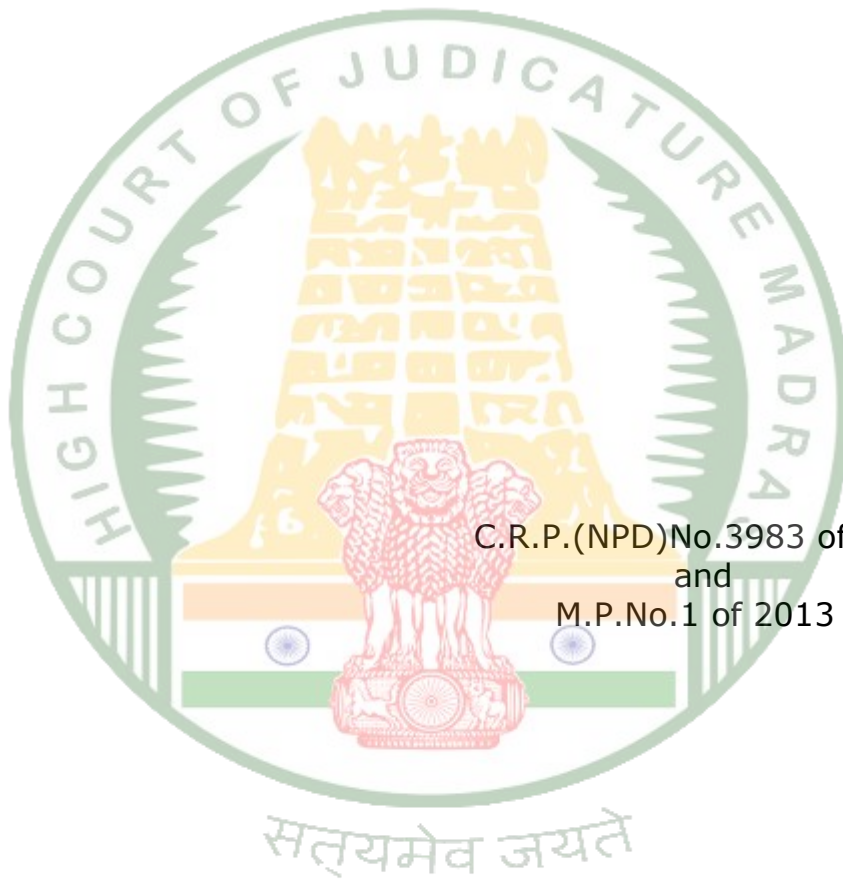
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