

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 25TH DAY OF FEBRUARY 2019

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A. Nos.1503, 1504,1505, 1506 OF 2019
in

EP.NOS.16 & 17 OF 2019

E.P.NOs.16& 17/2019:

S.Pathmakumar
So Late Sripathmanathan
No.11, Karpagam Gardens
1st Main Road
Adyar,
Chennai 600 020

..Petitioner

.Vs.

1.S.Sriharan
S/o Late Sripathmanathan
22A, Arunchalam Road,
Kotturpuram, Chennai 600 085.
Now residing at
No.3/1,2,3 Withypool Complex,
Boat Club Road, RA Puram,
Chennai600 028.
Presently at No.302, Anna Salai,
chennai- 600 002.

..Respondent

2. M/s.Malabar Hotels Pvt Ltd.,
1/238, Old ahabalipuram Road,
Semmechery, Chennai - 600 096.

..Garnishee

A. Nos.1503, 1504 and 1506/2019:

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S/o Late Sripathmanathan
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..Applicant/ Respondent

in A.Nos.1503,1504,1506/2019

..Vs..

1st Main Road
Adyar, Chennai 600 020

..Respondent/Petitioner
in A.Nos.1503,1504,1506/2019

2. M/s.Malabar Hotels Pvt Ltd.,
1/238, Old ahabalipuram Road,
Semmechery, Chennai - 600 096.

..Garnishee
in A.Nos.1503,1504,1506/2019

A. No.1503 of 2019:-

Application praying that this Hon'ble Court be pleased to set aside the order passed by the learned Master High Court, Madras dated 13.02.2019 passed in E.P.No.16 of 2019.

A. No.1504 of 2019:-

Application praying that this Hon'ble Court be pleased to stay the operation of the order passed by the learned Master, High Court, Madras dated 13.02.2019 passed in E.P.No.17 of 2019 pending disposal of the present application.

A. No.1506 of 2019:-

Application praying that this Hon'ble Court be pleased to stay the operation of the order passed by the learned Master, High Court, Madras dated 13.02.2019 passed in E.P.No.16 of 2019 pending disposal of the present application.

E.P.NO.17/2019:

S.Pathmakumar
So Late Sripathmanathan
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Chennai 600 020

..Petitioner

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..Respondent/Judgment Debtor

A. No.1505/2019:

1.S.Sriharan
S/o Late Sripathmanathan
22A, Arunchalam Road,
Kotturpuram, Chennai 600 085.

Now residing at
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Chennai 600 028.
Presently at No.302, Anna Salai,
chennai- 600 002.

..Applicant/ Respondent/
Judgment Debtor

..Vs..

S.Pathmakumar
So Late Sripathmanathan
No.11, Karpagam Gardens
1st Main Road
Adyar, Chennai 600 020

..Respondent/Petitioner

A. No.1505 of 2019:-

Application praying that this Hon'ble Court be pleased to set aside the order passed by the learned Master, High court, Madras dated 13.02.2019 passed in E.P.No.17 of 2019.

These applications coming on this day before this court for hearing the court made the following order:

A.Nos. 1503 & 1505 of 2019 are filed challenging the order of the learned Master made in E.P.Nos.16 and 17 of 2019.

2. In so far as the A.No.1503 of 2019 is concerned, challenge is to the order of attachment made by the learned Master in respect of the certain shares held by the Judgment Debtor in M/s. Malabar Hotels Private Limited.

3. In so far as the A.No.1505 of 2019, challenge is to the order by the Master transmitting the decree to the District Court, Ramanathapuram for execution.

4. Mr.V.Raghavachari, learned counsel appearing for the applicant in both these applications would vehemently contend that both the execution petitions amount to simultaneous execution. Hence, the same cannot be made

without permission of the Court. He would also point out that the earlier execution petition filed by the decree holder in A.No.351 of 2013 seeking arrest of the Judgment Debtor/applicant, herein, was allowed by the learned Master and the applications filed challenging the said order were also dismissed by the learned Single Judge of this Court on 06.10.2017. The said order of dismissal has been challenged in O.S.A.No.313 of 2017 and the said appeal is pending.

5. Therefore, according to Mr.V.Raghavachari, in view of the provisions of Order 21 Rule 21 of the Code of Civil Procedure, the decree holder cannot launch simultaneous execution without obtaining leave of the Court. He would also rely upon the judgment of the division bench of this Court in **Ram Narayan Bhattad Vs. Krishna Bai Bhaver and others reported in (2004) 3 CivilJ 582: (2004) 2 CTC 81 : (2004) 2 LW 401** wherein, a division bench of this Court has held that in order to enable the decree holder to prosecute simultaneous execution petitions, the decree holder must seek permission of the Court which passed the decree. After discussing the scope of simultaneous execution and after referring to various decisions of this Court on the question of simultaneous execution, the Hon'ble Division Bench had observed as follows:

"If it is so, if the appellant wants to file execution petitions simultaneously in the High Court (Original Side) to execute the same decree, before entertaining such execution petitions, the appellant has to satisfy the Court two facts. One is that the property within the jurisdiction of the Court to which the decree is sent for execution is also not

comparatively of much value and the second is that the earlier order of transfer was passed not on valid reasons, though the judgment debtor is having sufficient property of much value to satisfy the decree within the jurisdiction of the High Court (Original Side). The said satisfaction can be arrived at only if the appellant files an application seeking permission to the file execution petition before the Original Side of this Court. Such application is necessary because if the decree is executed in two or more Courts at the same time, there is a possibility of realising more amounts from the judgment-debtor, then it is against the interest of the judgment-debtor."

6. In view of the said categorical of the pronouncement of the division bench of this Court, I am of the considered opinion that E.P.No.16 of 2019 which seeks attachment of the shares of the Judgment-Debtor in M/s.Malabar Hotels Private Ltd., should have been proceeded by an application for permission. In the absence of such application, this execution petition is clearly not maintainable.

7. Mr.N.V.V.Krishnan, learned counsel for the respondent/decreed holder would submit that he would withdraw the said execution petition in E.P.No.16 of 2018.

8. In view of the same, the application in E.P.No.16 of 2018 will stand dismissed as withdrawn and A.No.1503 of 2019 will stand allowed.

9. A.No.1506 of 2019 seeking stay of operation of the order passed by the Master in E.P.No.16 of 2019 is dismissed as unnecessary.

10. In so far as the E.P.No.17 of 2019 is concerned, I do not think the prohibition regarding simultaneous execution would apply to the same. All that is done by the order of the learned Master is to transmit the decree to the Principal District Court, Ramanathapuram for appropriate action. This transmission is governed by order 21 rule 6 of the Civil Procedure Code. The Court which passed the decree can always transmit the decree to the Court within whose jurisdiction the property of the judgment-debtor is situated for execution and the same cannot be treated as an execution petition. Therefore, I do not see any reason to interfere the order of the Master transmitting the decree in C.S.No.410 of 2011 to the District Court, Ramanathapuram for the purposes of execution.

11. Hence, A.No.1505 of 2017 which is a nature of the appeal against order passed in E.P.No.17 of 2019 is dismissed. In view of the order in A.No.1505 of 2019, the application for stay in A.No.1504 of 2019 is closed.

12. It will be open to the judgment-debtor to raise all objections regarding the execution of the decree before District Court, Ramanathapuram.

Sd/- R.S.M.J.
25.02.2019

//Certified to be a true copy//
Dated this the day of 2019.

GJM-10.04.2019

COURT OFFICER