

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CRP (NPD) NO.2372 OF 2019

AND

CMP NOS.15446 AND 17730 OF 2019

M/s.Natarajan Devi Polymers Private Limited
Rep. by its Director Mr.Natarajan
Abraham Pandithar Thottam
20, Opp. KMS Nagar,
Medical College Road, Thanjavur.

... Petitioner

Vs.

Sheik Mohammed Nizar

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 30.01.2019 made in E.A.No.129 of 2018 in E.P.No.96 of 2017 in ARC / SAR, Chennai 1/2015 on the file of the District Court II, Kancheepuram.

For Petitioner : Mr.L.K.Chandrasekhar
for Mr.A.K.M.Samsunihar

For Respondent : Mr.S.Sivaraman

ORDER

Aggrieved over the order raising the attachment passed in the execution petition, the decree holder prefers the above Civil Revision Petition.

2. Pursuant to the arbitration award passed on 03.03.2017, the petitioner/decreed holder filed an execution petition for sale of immovable properties. In that process, the property was attached, since the notice sent to the judgment debtor/respondent was returned as unclaimed. Later, the judgment debtor/respondent filed an execution application to set aside the *exparte* order on the ground that notice was not served on him and that the address mentioned in the notice was an obsolete address, where he is not residing. Considering the said facts, the *exparte* order was set aside and in view of setting aside the *exparte* order, the Execution Court has set aside the *exparte* order of attachment also.

3. It is the grievance of the petitioner that when the *exparte* order is set aside and an execution application came to be filed to raise the attachment, he has filed a counter in that matter. Without considering the contents of the counter, and its merits, the order, by default came to be passed. The reasons stated by the Execution Court is that once the *exparte* order is set aside, the *exparte* attachment order shall also automatically lifted. The reason given by the Trial Court is not sustainable in law. When a counter is filed in a petition to raise the attachment, the matter has to be considered independently on merits and the attachment order cannot be raised automatically only because the *exparte* order is set aside.

4. Considering the same, the impugned order dated 30.01.2019 passed by the Execution Court in E.A.No.129 of 2018 in E.P.No.96 of 2017 in ARC/SAR/CHENNAI No.1/2015 is set aside and a direction is issued to the Execution Court to consider the matter of raising attachment or sustaining the attachment after considering the matter on merits. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

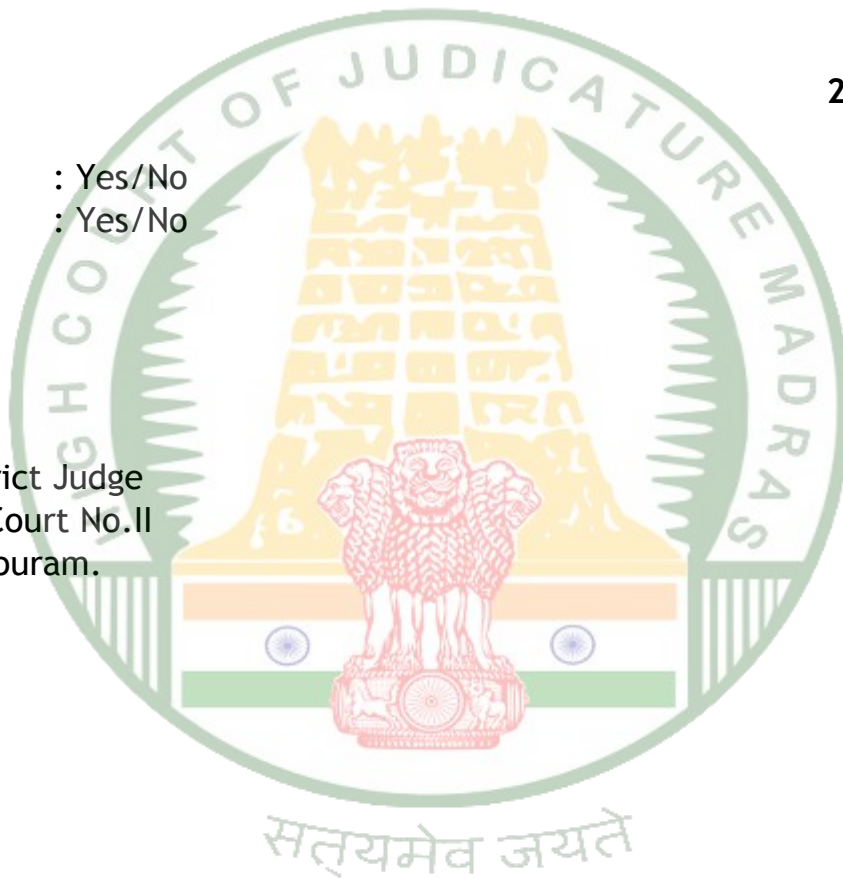
5. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected civil miscellaneous petitions are closed.

27.08.2019

Index : Yes/No
Internet : Yes/No
TK

To

The District Judge
District Court No.II
Kancheepuram.



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M.GOVINDARAJ, J.

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