

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 04TH DAY OF JUNE 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.4830 of 2018
in

A.No.3223 of 2017
in

E.P.No.146 of 2016
in

O.P.MSEFC/TRY.3/NO.3 OF 2014
(Arbitration Award)

M/s. CJP Industries
Rep.by its Managing Partner,
Mr.S.Julius
W 166/167, Sidco Industrial Estate,
Valavanthankottai
Trichy 620015 ...Petitioner/Decree Holder

-vs-

M/s. Tecnpro Systems Limited,
Rep.by its Managing Director,
Tecnpro Towers, 11-A17, 5th Cross Road
Sipcot IT Park, Siruseri,
Chennai 603 103 ..Respondent/Judgement Debtor

A.No.3223 of 2017

1.Amitha Bishnoi,
Old No.54-E, New No.77
Gulmohar Avenue,
Velachery Road,
Chennai 600 032

2.Akshay Kumar Bishnoi,
S/o.Amitha Bishnoi
Old No.54-E, New No.77
Gulmohar Avenue
Velachery Road,
Chennai 600 032

...Applicants

-vs-

1.M/s. CJP Industries
Rep.by its Managing Partner,
Mr.S.Julius
W 166/167, Sidco Industrial Estate,
Valavanthankottai
Trichy 620015

...Respondent/Decree Holder

A.No.1436 of 2018:

M/s. CJP Industries
 Rep.by its Managing Partner,
 Mr.S.Julius
 W 166/167, Sidco Industrial Estate,
 Valavanthankottai
 Trichy 620015 ...Applicant/Respondent/Decree Holder

-vs-

1.M/s. Techpro Systems Limited,
 Rep.by its Managing Director,
 Techpro Towers
 11-A 17, 5th Cross Road
 Sipcot IT Park,
 Siruseri, Chennai 603 103

2.Amitha Bishnoi
 Old No.54-E, New No.77
 Gulmohar Avenue
 Velachery Road, Chennai 32

3.Akshay Kumar Bishnoi
 S/o.Amitha Bishnoi
 Old No.54-E, New No.77
 Gulmohar Avenue,
 Velachery Road,
 Chennai 32

..2nd and 3rd Respondent/Applicant/
 Proposed Respondent 2 & 3

A.No.4830 of 2018

1.Amitha Bishnoi,
 Old No.54-E, New No.77
 Gulmohar Avenue,
 Velachery Road,
 Chennai 600 032

2.Akshay Kumar Bishnoi,
 S/o.Amitha Bishnoi
 Old No.54-E, New No.77
 Gulmohar Avenue
 Velachery Road,
 Chennai 600 032

...Applicants

-vs-

M/s. CJP Industries
 Rep.by its Managing Partner,
 Mr.S.Julius
 W 166/167, Sidco Industrial Estate,
 Valavanthankottai
 Trichy 620015

2.M/s.Techpro System Limited,
Rep.by its Managing Director,
Techpro Towers, 11-A 17, 5th Cross Road
Sipcot IT Park, Siruseri,
Chennai 603 103

...Respondent/Respondent/Judgement Debtor

A.No.4830 of 2018

Application praying that this Hon'ble Court be pleased to call for the records of the Learned Master, High Court of Madras in A.No.1436 of 2018 in A.No.3223 of 2017 in E.P.No.146 of 2016 and set aside the order dated 27.04.2018 and allow this appeal and direct the Master to take on EP and proceed the same in accordance with law.

This Application coming on this day before this Court for hearing, **the court made the following order:**

A.No. 4830 of 2018 has been filed to set aside the order dated 27.04.2018 passed by the learned Master in A.No. 1436 of 2018 in A.No.3223 of 2017 in E.P.No.146 of 2016.

2. The first respondent herein had obtained a money decree against the second respondent. E.P.No.146 of 2016 is for seeking to execute the said decree by attachment and sale of particular property. The columns in the execution petition which seek details of the interest of the Judgment Debtor and the encumbrances over the property were left blank. An order of attachment was passed by the learned Master on 05.04.2017. The applicants herein had filed A.No.3223 of 2017 seeking to raise the order of attachment on the ground that the property that has been attached does not belong to the judgment debtor.

3. According to the applicant, they had purchased the

property as early as on 18.01.2008 and they are the absolute owners of the property. The said application to raise the attachment is pending. While so, the first respondent/decreed holder had filed A.No.1436 of 2018 before the learned Master seeking to issue Subpoena to the Vijaya Bank, Adyar Branch to furnish the entire records pertaining to the transactions of Mr.Ajaykumar Bishnoi, Mrs.Amita Bishnoi and Mr.Akshay Kumar Bishnoi contending that several crores of rupees has been illegally routed from the account of the Judgment Debtor company to the personal account of the promoter of the family members of the Judgment Debtor company. The learned Master by an impugned order has allowed the said application accepting the plea that the property in question has been purchased out of the funds that were siphoned or diverted.

4. Aggrieved by the said order, the applicants have come forward with the present A.No.4830 of 2019 which is in the nature of the appeal against the order of the learned Master made in A.No.1436 of 2018. A perusal of the order of the learned Master discloses that it is beyond the scope of the proceedings and the prayer sought for. Admittedly, the decree came to be passed only on 06.01.2016 and the property in question was purchased by the applicant even in the year 2008. Therefore, the claim of the decree holder that the property in question has been purchased out of the funds of the company, which were siphoned off or diverted is wholly immaterial to the present proceeding. The decree

holder cannot contend before the Civil Court that the property was purchased from the funds belonging to the company in the name of the promoters of the company.

5. In view of the above, I am of the considered opinion that the learned Master was in error to directing the production of the accounts and it is also seen that a specific period has not been mentioned. Issuance of such Subpoena to the Bank Manager directing him to produce accounts without mentioning a specific period will only lead to confusion. I find that the order impugned is beyond the jurisdiction of the Executing Court. Hence, A.No.4830 of 2019 is allowed order of the learned Master dated 27.04.2018 made in A.No.1436 of 2018 is set aside. A.No.1436 of 2018 will sand dismissed. No costs.

Sd/.R.S.M.J

04.06.2019

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

R.s/14.06.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format