

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.3467 of 2014  
and M.P.Nos.1 & 2 of 2014

T.Gunasekaran

... Petitioner

Vs

1. The Canara Bank, Bangalore,  
Rep. by its Senior Manager,  
Villupuram Branch,  
Villupuram.

2. The Divisional Personnel Officer,  
Southern Railway,  
Tiruchirappali.

... Respondents

**PRAYER** : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 14.12.2011 passed by the learned Sub Judge, Villupuram in E.P.No.25 of 2008 in O.S.No.113 of 2008.

For Petitioner : Mr.S.T.P.Kuilmozhi

For Respondents

For R1

: Ms.C.Harini

For Mr.M.V.Seshachari

For R2

: No appearance

**ORDER**

Aggrieved over the docket order dated 14.12.2011 passed by the learned Sub Judge, Villupuram, in E.P.No.25 of 2008 in O.S.No.113 of 2008, the petitioner, who is the second defendant in the said suit filed this Civil Revision Petition.

2. The petitioner herein is the judgment debtor/second defendant in O.S.No.113 of 2008 on the file of the learned Principal Session Judge, Villupuram. Originally on 13.10.2005, the petitioner herein filed a suit in O.S.No.555 of 2005, before the learned District Munsif, Thiruvannamalai, against the legal heirs of one Erusan and the respondents herein. In the said suit, the petitioner sought for the relief of direction to direct the legal heirs of the said Erusan/defendants 1 to 4 and the sixth defendant ie., the second respondent herein, to discharge the loan amount due by the deceased Erusan to the fifth defendant ie., the first respondent herein, which is due in the loan account No.6132 dated 06.11.2004. On 25.02.2008, the said suit was decreed by the learned Principal District Munsif, Thiruvannamalai as prayed for.

3. Thereafter, the first respondent in this revision petition Viz., the Canara Bank filed a suit in O.S.No.113 of 2008 as against the deceased K.Erusan, the revision petitioner and also against the second respondent herein.

In the said suit, the deceased Erusan and the revision petitioner were arrayed as first and second defendants. Further in the said suit, the first respondent prayed to pass personal decree as against the defendants 1 & 2 directing them to pay a sum of Rs.1,30,733/- together with subsequently interest. The background of the said suit filed by the first respondent will reveal the fact that the petitioner herein is the guarantor of the loan availed by the deceased Erusan. The said suit filed by the first respondent also decreed on 30.04.2009 in favour of the first respondent.

4. After disposal of the suit in O.S.No.113 of 2008, the first respondent herein, who is the decree holder, has filed an execution petition in E.P.No.25 of 2010 for the realization of decree passed in O.S.No.113 of 2008. Actually, the said execution petition was filed only as against the petitioner herein. In the said execution petition filed by the first respondent i.e., the Canara Bank, the learned Sub Judge, Villupuram, passed an order of attachment of salary of the petitioner, drawn from the second respondent. In fact, on 14.12.2011, the learned Sub Judge, Villupuram issued Pro order to the second respondent i.e., Garnishee and subsequently, passed an order of absolute attachment. After passing the said order, the learned Judge closed the said execution petition. Only in that said circumstances, the petitioner has approached this Court to set aside the order of attachment dated 14.12.2011, passed by the learned Sub Judge, Villupuram.

5. The learned counsel appearing on behalf of the petitioner would contend that the learned Sub Judge, Villupuram, passed an order for recovering the monthly salary of the petitioner to the period of 32 months, which is violative of Section 60 of C.P.C.

6. On the other hand, the learned counsel appearing on behalf of the first respondent would contend that if anything recovered in excess of decree amount or in violation of Section 60 of C.P.C., the option available to the petitioner is only to file execution application before the E.P. Court. She would further contend that in the order passed by the Execution Court, there is no irregularity found as alleged by the petitioner.

7. Upon considering the arguments advanced by the either side, for deciding the issue raised in this Civil Revision Petition, it is necessary to see whether the attachment order was passed in violation of Section 60 of C.P.C. But here it is the case of the petitioner that in the impugned order passed by the learned Sub Judge, Villupuram, the recovery has been made from the salary of the petitioner for the period of 32 months, which is violative of Section 60(1) of Civil Procedure Code.

8. Now on going through the impugned docket order passed by the Execution Court, there was no detail in respect of the periods for which the attachment was ordered. So, without seeing the detailed order passed by the Execution Court, this Court is not in a position to accept the contention raised by the petitioner. The only option available with the petitioner is that to approach the Execution Court to recover the excess amount, if any, paid to the first respondent. Instead of that, the petitioner approached this Court, without even enclosing a copy of Pro order issued by the Execution Court. So I am of the opinion that for redressing the grievances of the petitioner, liberty is given to him to file necessary application before the appropriate Forum, after enclosing the details of attachment made by the Garnishee.

9. With the above observations, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

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Index :Yes/No  
Internet :Yes/No  
Speaking order/Non-speaking order

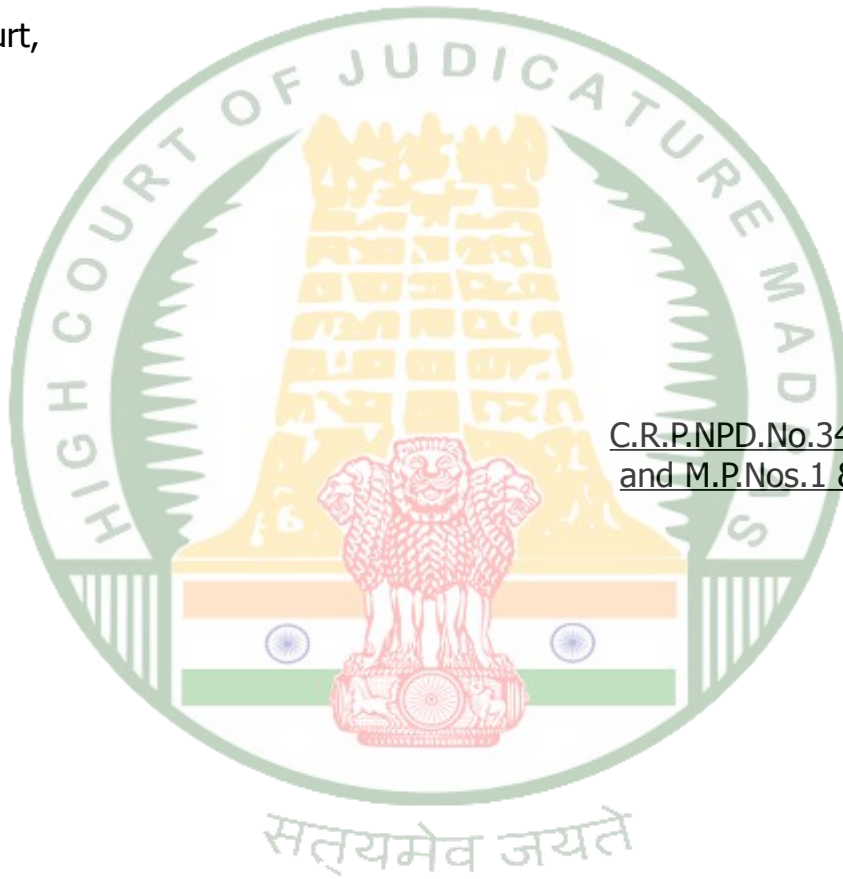
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**R.PONGIAPPAN, J**

rts

To

The Sub Court,  
Villupuram.



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and M.P.Nos.1 & 2 of 2014

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*"60. Property liable to attachment and sale in execution of decree :-*

*(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in corporation and, save as hereinafter mentioned, all other sale able property, movable or immovable, belonging to the judgment-debt- or, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment- debtor or by another person in trust for him or on his behalf :*

*Provided that the following particulars shall not be liable to such attachment or sale, namely:—*

*(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;*

*(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability*

*under the provisions of the next following section;*

*(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to<sup>1</sup>[an agriculturist or a labourer or a domestic servant] and occupied by him;*

*(d) books of account;*

*(e) a mere right to sue for damages;*

*(f) any right of personal service;*

*(g) stipends and gratuities allowed to pensioners of the government <sup>2</sup>[or of a local authority or of any other employer] or payable out of any service pension fund notified in the Official Gazette by the Central Government or the State government in this behalf, and political pension;*

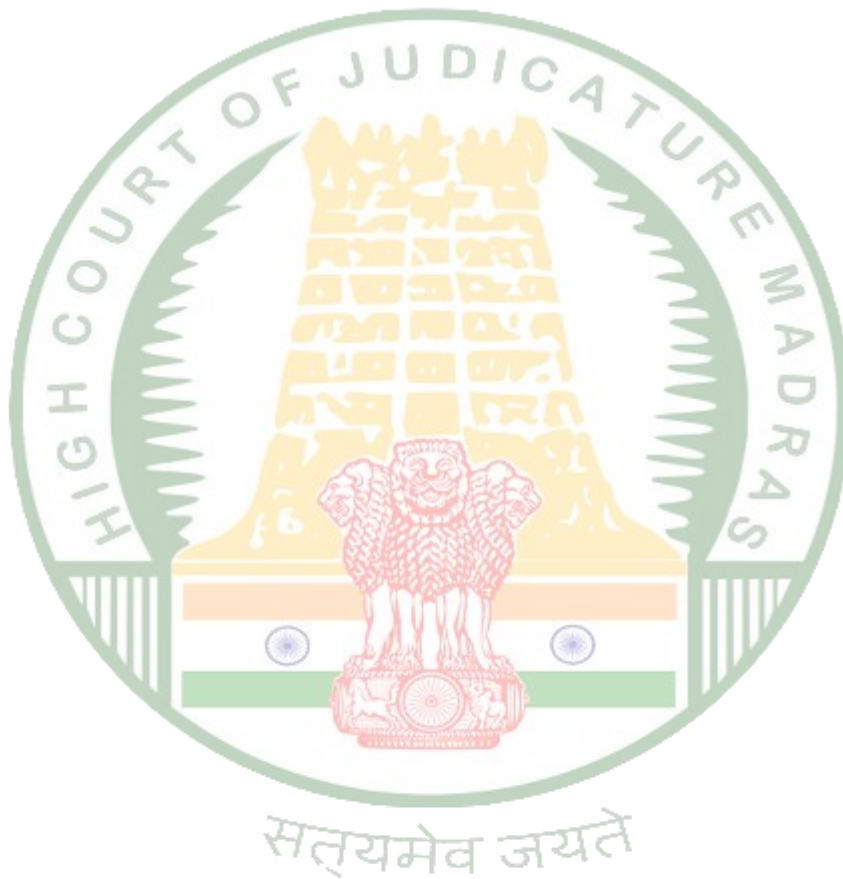
*(h) the wages of labourers and domestic servants, whether payable in money or in kind;*

*(i) salary to the extent of the first [one thousand rupees] and two third of the remainder] in execution of any decree other than a decree for maintenance.*

*[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months,*

*be finally exempt from attachment in execution of that decree.]*

So according to the said provision, the salary of the guarantor can be attached only for the period of 24 months and not exceeding the 24 months.



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