

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.R.P.No.3427 of 2019 and C.M.P.No.22536 of 2019

The Commissioner
Kancheepuram Municipality
Kancheepuram.

... Petitioner/Defendant

-Vs-

1.C.R.Baskaran
2.Laxmi Devi (R2 Given up)

... Respondent/Plaintiff

Prayer :

Civil Revision Petition under Section 115 of C.P.C., against the docket order dated 30.08.2019 passed in E.P.No.62 of 2018 in O.S.No.8 of 2018 on the file of the Additional District and Sessions Judge II, Kancheepuram.

For Petitioner : Mr.P.Srinivas

O R D E R

This revision has been filed against the docket order dated 30.08.2019 passed in E.P.No.62 of 2018 on the file of the Additional District and Sessions Judge II, Kancheepuram, where the revision petitioner / Judgment Debtor has been set exparte and order of attachment has been passed.

2. Heard Mr.P.Srinivas, learned counsel appearing on behalf of the revision petitioner.

3. The impugned order was passed by the Execution Court under Order 21 Rule 105, as under Sub-rule(3) of Rule 105, if the opposite party, may be a judgment debtor or a third party, on receipt of summons and entered appearance, had not appeared on the date of hearing, the Court will set him exparte. That is how the impugned order seems to have been passed by the Execution Court on 30.08.2019, where admittedly the revision petitioner did not appear before the Execution Court.

4. If at all any such order is passed, setting the respondent / judgment debtor in the execution proceedings

exparte, in order to set aside the said order, application can be filed by such party against whom exparte order was passed, by giving plausible reasons before the execution court itself under Order 21 Rule 106 of C.P.C.

5. Therefore, when there is an alternative remedy under Order 21 Rule 106 of C.P.C., without exhausting the same, the revision petitioner cannot approach this Court. Hence, this revision petition is liable to be rejected at the admission stage itself.

6. In view of the same, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. However, a week's time from the date of receipt of a copy of this order is granted to the revision petitioner to approach the Court below by filing appropriate petition as indicated above and till such time, the impugned order shall not be given effect to. It is made clear that, within the said time if no such application is filed by the revision petitioner herein in the Court below, there is no impediment for the Court below to execute the impugned order passed by the said Court.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Additional District and Sessions Judge II,
Kancheepuram
2. The Commissioner, Kancheepuram Municipality,
Kancheepuram.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.88820

C.R.P.No.3427 of 2019

SAI (CO)
CS/25/10/2019