

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD).No.1739 of 2014
M.P.No.1 of 2014 and CMP.No.22980 of 2018

Shanuga Chettiyar ... Petitioner

Vs

Kandasamy Udaiyar .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C.to set aside the fair and decretal order dated 17.02.2014 passed in E.A.No.15 of 2014 in E.P.No.19 of 2011 in O.S.No.31 of 2002 on the file of the Court of Subordinate Judge, Perambalur.

For Petitioner : Mr.R.Veeramani

For Respondent : Mr.A.V.Raja

ORDER

The present civil revision petition has been filed by the petitioner to set aside the fair and decretal order dated 17.02.2014 passed in E.A.No.15 of 2014 in E.P.No.19 of 2011 in O.S.No.31 of 2002 on the file of the Court of Subordinate Judge, Perambalur.

2. The petitioner herein is the defendant in O.S.No.31 of 2002 and the respondent is the plaintiff therein. For the sake of convenience, the parties are referred to as per their rank in the suit.

3. The Court below had decreed the suit for an amount of Rs.2,35,965/- vide Judgment dated 16.12.2005 in O.S.No.31 of 2002. Pursuant to the same, the plaintiff/deeree holder filed an Execution Petition in E.P.No.19 of 2011 to realise the suit amount along with interest to the tune of Rs.3,97,791/- and therefore, sought for attachment of the immovable property of the defendant/Judgment debtor. When the case was posted on 03.02.2014, the defendant/Judgment debtor appeared in the Court and explained his inability to pay the decree amount and requested to pay the same in installments at Rs.10,000/- per month. Thereafter, his counsel, without the knowledge and consent of the defendant/Judgment debtor, filed a memo and undertook to pay Rs.40,000/- per month for ten months, to discharge the liability. The Court below recorded the same and passed an order, directing the defendant/judgment debtor to pay Rs.50,000/- per month, failing which, to proceed with the sale of the properties. After coming to know about the same, the defendant/Judgment debtor filed E.A.No.15/2014, to modify the order dated 03.02.2014 to pay a sum of Rs.25,000/- per month. The said

application was dismissed by the Court below, with the following observation.:-

“ 13 ... But now the Judgment/debtor has come forward with an false affidavit in support of this petition that he is not aware of the contents of Memo filed by his counsel and that he is also not aware of the conditional order to pay Rs.50,000/- on 14.02.2014 and that he came to know about it only on 14.02.2014 when his counsel asked him to pay Rs.50,000/- The affidavit filed by the Judgment debtor is absolutely false and untenable. If really the Judgment debtor was not having knowledge about the contents of the memo and the conditional order he could have challenged it before this Court or appealed against it and need not have waited till 14.02.2014. Further, making false allegations against his previous Advocate, the Judgment debtor has conveniently engaged another Advocate and filed an false affidavit by suppressing all true facts that transacted before this Court. Therefore, at the out set, the Judgment debtor has approached this Court with false affidavit and unclean hands suppressing material facts”

4. I have perused the records and considered the arguments advanced by the learned counsel for the petitioner-judgment debtor.

5. It is seen from the order impugned, a memo was filed by the counsel for the Judgment debtor/defendant on 03.02.2014 before the court and therefore, a conditional order was passed on 03.02.2014, which reads as under:

Sale is adjourned on condition that the Judgment debtor shall pay the decree amount in Eight installments of Rs.50,000/- each for installments 1 to 7 and the balance decree amount in the 8th installment. 1st installment to be paid on 14.02.2014 and the subsequent installments on 14th day of every month, failing to pay any one installment, the Decree holder is entitled to file memo and pay fresh batta for sale proclamation and sale on the date fixed by this Court. Call on 14.02.2014.

6. While passing the impugned order, the Court below has observed that the defendant/Judgment debtor came forward with a false and untenable plea that he was not aware of the conditional order and he came to know about the same only on 14.02.2014, when his counsel asked him to pay Rs.50,000/-, if he was not having knowledge about the contents of the memo and the conditional order, he could have challenged it before the Court or appealed against it and need not have waited till 14.02.2014 ; further, to substantiate the said allegations against his previous counsel, he engaged a new counsel and filed the petition.

7. The debt is of the year 1998 . The suit was filed on 14.02.2002. the suit was decreed on 16.12.2005 decreeing an amount of Rs.2,35,965/- together with the cost of Rs.17,698.25/-. The execution petition was filed on 17.08.2011.

8. No attempt was made by the petitioner-judgment debtor pay the decreed amount deposit the suit decree having attained finality in absence of appeal.

9. The respondent-decree holder was aged 73 when he filed E.P.No.19 of 2011 to execute the Judgment and decree dated 16.12.2005 in O.S.No.31 of 2002.

10. On 22.01.2014, the petitioner-judgment debtor filed a petition undertaking to pay a sum of Rs.10,000/- towards part satisfaction of the decree and to record the same and sought for further time.

11. Thereafter, a memo dated 03.04.2014 was filed by the erstwhile counsel of the petitioner-judgment debtor undertaking to pay a sum of Rs.40,000- every month. Recording the same, the court directed the petitioner -judgment debtor to pay a sum of Rs.50,000/- per month.

12. After filing the same, the petitioner-judgment debtor filed I.A.No.15/2014 seeking to modify the order claiming that his erstwhile counsel filed the memo without instructions from him. He also stated that the memo was not been signed by him.

13. In the affidavit, the petitioner -judgment debtor has stated that he was willing to pay a sum of Rs.10,000/- per month to satisfy the judgment and decree. The Court has however declined to modify the order and dismissed the application filed by the petitioner-judgment debtor. In the petition, the petitioner-judgment debtor has undertaken to pay a sum of Rs.25,000/- p.m.to avoid sale of his property.

14. At the time of admission of this Civil Revision Petition, an order dated 25.05.2014 was passed in M.P.No.2 of 2014 directing the petitioner-judgment debtor to pay a sum of Rs.1,00,000/- on or before 01.06.2014. This has been paid.

15. The fact that the amount is due as per the judgment and decree is not in dispute. The petitioner had also agreed to pay a sum of Rs.25,000/- p.m. If the balance amount was paid, as per this affidavit, by the decree would have been satisfied. Therefore, I do not find no merits in the present civil revision petition except to deny the decree holder from enjoying the fruits of the Judgment and decree.

16. Since the passing of the interim order, there is a further lapse of almost five years . No further payments have been made even as per the

undertaking given by the petitioner-judgment debtor in the affidavit filed in support of I.A.No.15 of 2014 undertaking to pay a sum of Rs.25,000/- p.m.to satisfy his obligation under the judgment and decree dated 16.02.2005.

17. Therefore, the present civil revision petition is liable to be dismissed. However, while dismissing the present Civil Revision Petition, the petitioner-judgment debtor is given one last chance to pay the balance amount as decreed together with interest as per the Judgment and decree dated 16.02.2005 thereon within a period of 12 weeks from the date of receipt of this order failing which the decree holder is entitled to take such steps as are available to him in law in execution proceedings and the court below shall proceed to pass appropriate orders in the execution proceedings.

18. Accordingly, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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11.04.2019

Index: Yes/ No
Internet : Yes/No
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C.SARAVANAN,J.

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To
The Subordinate Judge,
Perambalur.



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