



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (NPD) (MD) .No.818 of 2011
and M.P. (MD) .No.1 of 2011

Muniappa Gounder

.. Petitioner/3rd Party

Vs.

1.Kaliappa Gounder
2.Mariappan

.. Respondents/Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order passed in E.A.No.54/2006 in E.P.No.180 of 2005 in O.S.No.536 of 2003, dated 17.08.2010 on the file of the Principal Subordinate Court, Dindigul.

For Petitioner : Mr.M.S.Suresh Kumar
For Respondents : Mr.G.Gomathi Sankar for R1
R2 - Dismissed vide order dt.16.03.2015

ORDER

This civil revision petition is directed against the order passed by the Executing Court dismissing the petition filed by the third party to the suit under Section 47 of Code of Civil Procedure.

2.It is un-fortune to note that the revision petitioner has not produced the copy of the plaint and the documents which are necessary for the purpose of disposing of this revision petition effectively. The revision petitioner is a third party to the suit. The first respondent in this revision petition appears to have filed a suit in O.S.No.536 of 2003 on the file of the Principal Sub Court, Dindigul, and obtained a money decree. In execution of the money decree, the first respondent also filed an execution petition in E.P.No.180 of 2005. In the execution petition, the decree holder sought for attachment of the amount lying with the Garnishee Bank under Order 21 Rule 46 and to direct the Garnishee to deposit the amount to the credit of the suit. As per the execution petition, the first respondent claimed a sum of Rs.3,21,200.35 with interest at the rate of 6 % per annum from the year 2005.

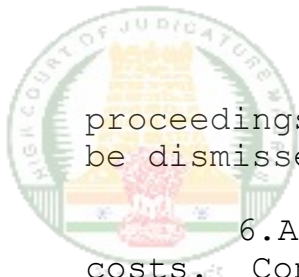
3.During the pendency of the execution petition, the revision petitioner filed a petition in E.A.No.54 of 2006 to declare the decree in O.S.No.536 of 2003 is null and void, stating that the suit



has been filed against the second respondent who is only a Director of Bank by name M/s.Magudam Paper and Boards Private Ltd., and that a decree has been obtained fraudulently. It is stated that the amount lying in the deposit is by way of selling the properties of the company in a suit filed by M/s. TIC, as against the company and that the said amount cannot be directed to be paid to the decree debt. It is further contended that suit has been filed only against the second respondent in his individual capacity and that the company is not made liable even as per the decree. However, it is admitted that the suit has been filed by showing the second respondent as the Managing Director of the Company. The suit as well as the Execution Petition is filed against the company represented by one Muniappan and it is shown as the company was represented by its Managing Director by name P.Muniappan. The revision petitioner contends that he is the Managing Director of the Company. However even in the petition, he has filed in the his name and not in the name of company. The revision petitioner has not produced the plaint filed and decree obtained by the first respondent.

4.In such circumstances, this Court prima facie is of the view that the petitioner has not come to Court with clean hands. The counsel appearing for the petitioner is only stated that the petitioner has produced some documents before the lower Court to sustain his plea i.e., according to him the document would show that the petitioner is the Managing Director of the company. The petitioner has not produced the documents before this Court to sustain his plea. The company is represented by the the Managing Director namely, P.Muniappan. The question whether the Managing Director was Mr.Muniappan or the petitioner is not an issue which is relevant to grant relief in the petition under Section 47 of C.P.C. It is not in dispute that the company as such is a party in the suit. It is not the case of the petitioner that the company is not involved. It is the case of revision petitioner that a suit had been filed against the second respondent in his individual capacity on the basis of a pronote alleged to have been executed by him on behalf of the company. However, in the execution petition filed before the lower Court, the defendant is the company represented by Managing Director. The company is not a party in the petition filed by revision petitioner. Absolutely no document or materials produced before this court to substantiate the case of the petitioner. The petitioner himself has admitted that he knows about the proceedings in O.S.No.536 of 2010. In such circumstances, the absence of any explanation by the revision petitioner as to why and how he did not take any steps to implead himself as a party, is also cited as a reason by the lower Court to dismiss the petition.

5.Having regard to the conduct of the revision petitioner, that he has not produced any material before this Court to sustain any of the grounds raised in the memorandum of grounds, this court is of the view that the petition is only to drag on the



proceedings without any merits. Hence, this petition is liable to be dismissed.

6.As a result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal Subordinate Judge, Dindigul.

Copy to:

1.The Section Officer,
E.R.Section,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-78423[F] dated 30/07/2019)

C.R.P. (NPD) (MD) .No.818 of 2011
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TM

JMN(28.08.2019) 3P : 6C