



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P (NPD) (MD) .No.2634 of 2018

in

C.M.P (MD) .No.11512 of 2018

and

CMP (MD) .No.2769 of 2019

J.Parameshwari : Petitioner/Judgment Debtor

Vs.

Raja@Murugan : Respondent/Decree Holder

PRAYER : This Civil Revision Petition has been filed under 115 of Code of Civil Procedure against the fair and decreetal order dated 03.11.2018 made in E.A.No.31 of 2018 in E.P.No.151 of 2017 on the file of Additional District Judge (FTC), Theni in O.S.No.1714 of 2013 on the file of the II Assistant, City Civil Court at Chennai.

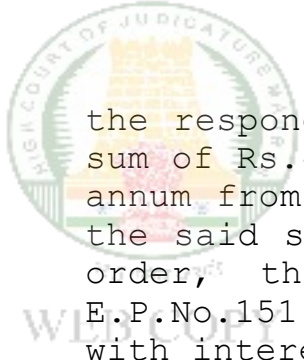
For Petitioner : Mr.M.V.Venkataseshan

For Respondent : Mr.K.Muraleedharan

O R D E R

This Civil Revision petition has been preferred against the fair and decreetal order dated 03.11.2018 made in E.A.No.31 of 2018 in E.P.No.151 of 2017 on the file of Additional District Judge (FTC), Theni in O.S.No.1714 of 2013 on the file of the II Assistant, City Civil Court at Chennai.

2.The brief facts of the suit in O.S.No.1714 of 2013 are that the respondent herein provided a sum of Rs.3,50,000/- to the petitioner herein on 02.10.2011 as hand loan by way of cash in the presence of witnesses at Chennai. The petitioner while receiving the loan amount from the respondent had given an undertaking/promissory note to him agreeing to repay the same on or before 30.03.2012. When the respondent insisted the petitioner to settle the loan amount, she failed to repay the same. Hence,



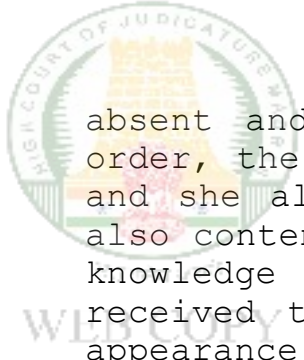
the respondent filed the suit in O.S.No.1714 of 2013 to recover a sum of Rs.4,30,500/- together with interest at the rate of 24% per annum from the date of plaint till the date of realisation and in the said suit, exparte decree was ordered. Based on the decreetal order, the respondent has filed the execution petition in E.P.No.151 of 2017 for recovering a sum of Rs.4,30,500/- along with interest at 24% per annum.

3.Subsequent to that E.A.No.31 of 2018 on the file of the Additional District Judge, Theni was filed by the petitioner herein. In the said E.A., the petitioner contended that she is the first defendant in the suit and the second defendant is her husband. The respondent herein filed the suit against me and her husband for recovery of money and in the said suit, the petitioner and her husband were set exparte. The petitioner further contended that they have not executed any promissory note in favour of the respondent and hence the suit filed on the basis of the promissory note has to be dismissed. The petitioner has filed I.A.Nos.7537 and 7538 of 2018 to condone the delay of 1219 days in filing the setting aside petition and to set aside the exparte decree dated 03.11.2014 made in O.S.No.1714 of 2013 on the file of the II Assistant City Civil Court, Chennai and those petitions are pending. In I.A.Nos. 7537 and 7538 of 2018 the petitioner contended that she has filed a detailed counter in the execution petition, in which, the calculation of interest and amount are wrong and the property shown in the execution petition is the joint property and the legal representatives of the petitioner herein have to be impleaded. Hence, the petitioner sought for stay of all further proceedings in E.P.No.151 of 2017 till the disposal of the petition filed in I.A.Nos.7537 and 7538 of 2018 on the file of the II Assistant City Civil Court, Chennai.

4.The learned Additional District Judge, Theni has observed the contentions raised by both counsel and also observed the proceedings and the status of the case and has given a finding that already the execution petition was filed by the respondent/decrece holder in E.P.No.1095 of 2013 before the IV Assistant City Civil Court, Chennai and the said Court has also ordered attachment of salary of the petitioner herein and certain amount was also attached from the salary. But at that time, the petitioner herein has not filed any petition to set aside the exparte decree and now only she filed I.A.Nos.7537 and 7538 of 2018 ie on 05.04.2018. Further, no stay order was granted by the City Civil Court, Chennai in the said two I.As., Hence, the executing Court has concluded that there is no valid ground to stay the proceedings in E.P., and hence, the learned Additional District Judge, Theni dismissed the E.A.No.31 of 2018. Aggrieved against the said order, petitioner before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

5.The learned counsel for the respondent/Judgment Debtor contended that in E.P.No.1095 of 2015 both parties were called



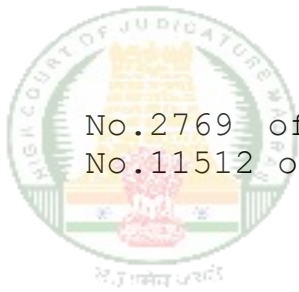
absent and the attachment was made absolute. Subsequent to the order, the petitioner/Judgment Debtor got retirement on 31.05.2017 and she also received her gratuity. The respondent/decreed holder also contended in the vacate stay petition that the respondent has knowledge about the suit in the year 2015 and the petitioner received the notice in E.P.No.995 of 2015 in which she entered appearance. Further, the learned counsel for the respondent contended that the reasons cited in this Civil Revision Petition is that the applications are pending before the II Assistant City Civil Court, Chennai are the reasons created from preventing the proceedings of the execution petition in E.P.No.151 of 2017. The order of Executing Court in E.A.No.31 of 2018 in E.P.No.151 of 2017 is fair and proper which need not be interfered.

6. Heard both sides.

7. This Court observed the entire proceedings relating to the suit, passing of an ex parte decree, filing of earlier proceedings and subsequent to that stay was granted by this Court to the Petitioner/Judgment Debtor and the order passed in E.A., This Court finds that only to consider the grievance of the petitioner in the Civil Revision Petition, interim stay was granted on condition to settle the amount.

8. In the Civil Revision Petition, it is observed that there is no valid grounds raised by the petitioner/Judgment debtor to entertain the revision which was filed against the order passed in E.A.No.31 of 2018. The petitioner simply contended that he has filed the applications in I.A.Nos.7537 & 7538 of 2018 to condone the delay in filing the petition and to set aside the ex parte decree. It is also observed that these two petitions were filed only after passing of the order in the E.A.No.31 of 2018. It is seen that the petitioner/Judgment debtor admitted her liability and the order of attachment was also passed and some attachment were also made from the salary of the Petitioner/ Judgment Debtor and only after making some objection, the Petitioner/Judgment Debtor has vehemently retired from service proves the fact that the purpose is only to evade the payment. It is seen that the executing Court after observing the entire facts, passed an order in E.A.No.31 of 2018 is very much reasonable and proper. The petitioner also knows the entire proceedings and certain payments were also made and only with an intention to defeat the right of the respondent/decreed holder, the petitioner has filed the petition after petition without any merit and the said petition was also dismissed by the concerned Court.

9. On perusal of the entire records and the submissions made by both counsel, this Court finds that the petitioner has filed this Civil Revision Petition only to delay the proceedings and to defeat the right of the respondent/decreed holder. In view of the above, this Civil Revision Petition is dismissed. C.M.P(MD).



No.2769 of 2019 is allowed and the stay granted in C.M.P(MD).
No.11512 of 2018 is vacated. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

1. The Additional District Judge (FTC)
Theni

2.The II Assistant, City Civil Court at Chennai.

3.The Section Officer,(2 copies)
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.RAMAKRISHNAN, Advocate (SR-58757[F] dated
04/04/2019)

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-58971[F] dated 04/04/2019)

msa

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