



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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C.R.P. (MD) No.1576 of 2019
and CMP (MD) No.8342 of 2019

Murugan

... Petitioner/Judgment Debtor/Defendant

-Vs-

1.Kavitha

... Respondent/Decree Holder/Plaintiff

2. The Chief Manager

Accountant Officer/Finance/TA/Circle 10

NLC India Limited

Neyveli

... Respondent/Garnishee

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, against the fair and decreetal order, dated 30.04.2019 in E.P.No.39 of 2018 in O.S.No.136 of 2017 on the file of the Subordinate Judge, Ambasamudram, Tirunelveli District.

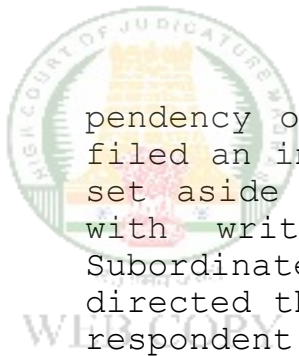
For Petitioner : Mr.P.Ganapathi Subramanian

For R1 : Mr.T.Antony Arulraj

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order, dated 30.04.2019 in E.P.No.39 of 2018 in O.S.No.136 of 2017 on the file of the Subordinate Judge, Ambasamudram, Tirunelveli District.

2. The learned counsel for the petitioner submitted that the first respondent/plaintiff filed a suit in O.S.No.136 of 2017, claiming a sum of Rs.4,00,200/- with subsequent interest based on a promissory notice, dated 28.12.2014. The learned Subordinate Judge, Ambasamudram vide ex-parte decree and judgment, dated 28.04.2018, decreed the suit and directed the petitioner/judgment debtor to pay a sum of Rs.4,00,200/- with subsequent interest at the rate of 9% for the principal amount from the date of plaint to date of decree and thereafter, with 6% interest till the date of realisation and cost a sum of Rs.18,424/-. But the petitioner/judgment debtor has failed to comply with the order passed by the trial Judge. Hence, the first respondent/plaintiff filed an execution petition in E.P.No.39 of 2018 in O.S.No.136 of 2017, seeking to execute the judgment and decree, dated 28.04.2018 by way of attaching the salary of the petitioner/judgment debtor. Immediately, upon hearing the



pendency of the execution petition, the petitioner/judgment debtor filed an interlocutory application in I.A.No.833 of 2018, seeking to set aside the exparte judgment and decree, dated 28.04.2018 along with written statement. Pending the said I.A., the learned Subordinate Judge has proceeded with the execution petition and directed the Garnishee of the petitioner/judgment debtor, the second respondent herein, to attach and send 1/3rd salary of the judgment debtor, Murugan, Service Worker, Grade-III by monthly instalment on every month from June 2019 to realize the amount of Rs.4,44,960/-. Aggrieved over the same order, the petitioner/judgment debtor is before this Court.

3.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

4.It is seen that admittedly the exparte decree was passed in favour of the first respondent/decreed holder. Thereafter, the first respondent filed E.P.No.39 of 2018 for attachment of salary of the petitioner herein. Immediately, the petitioner filed an interlocutory application in I.A.No.833 of 2019 to condone the delay of 165 days in filing the petition to set aside the exparte order passed in the suit, in which, notice was also served on the other side and the said I.A is pending.

5.This Court is of the view that without deciding the application in I.A.No.833 of 2018 to condone the delay and to set aside the exparte decree passed in the suit, the Court below has proceeded with the Execution Petition is not a proper one. In my considered opinion, to meet the ends of justice and to render substantial justice to the parties concerned, one opportunity may be given to the petitioner herein for filing of the written statement. Therefore, the learned Subordinate Judge, Ambasmudram, is directed to consider the application in I.A.No.833 of 2018, within a period of 30 days from the date of receipt of a copy of this order. Till then, there shall be an order of stay of all further proceedings in E.P.No.39 of 2018 in O.S.No.136 of 2017 on the file of the learned Subordinate Judge, Ambasamudram.

6.Both the parties are directed to cooperate with the Court below for early disposal of the case. If the petitioner herein is failed to co-operate for the disposal of the suit, the learned trial Judge is at liberty to pass appropriate order in accordance with law.



7. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar (CS)

To

The Subordinate Judge
Ambasamudram

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-91241[F] dated 04/10/2019)
+1 CC to Mr.K.R.LAXMAN, Advocate (SR-91322[F] dated 04/10/2019)
+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-91328[F] dated 04/10/2019)

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