

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 01.12.2020]

[ORDERS PRONOUNCED ON : 04.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.1922 of 2020

and

C.M.P.No.11767 of 2020

Athiyaman

... Petitioner

.. Vs ..

Bharathi Co-operative Spinning Mills Ltd,
Ettaiyapuram,
Rep.by its Administrator Mr.Velappan

... Respondent

PRAYER: Petition filed under Section 227 of Constitution of India, praying to set aside the fair and final order dated 11.06.2020 passed in R.E.P.No.99/2003 in O.S.No.130/1998 on the file of the Principal Subordinate Judge at Thiruppur.

For Petitioner

: Mr.R.Nalliyappan

For Respondent

: Mr.S.Diwakar

ORDER

The Judgment Debtor is the revision petitioner herein.

2. This petition has been filed under Section 115 of C.P.C

3.The respondent/plaintiff is the Decree-Holder obtained a money decree in O.S.No.130 of 1998 and filed Execution Petition in R.E.P.No.99 of 2003 for arrest of the judgement debtor for non payment of the decree amount and by an order dated 11.06.2020, the same was allowed and hence, the Civil Revision Petition.

4. Heard the learned counsel for the petitioner and the respondent.

5. The main contention of the learned counsel for the revision petitioner is that before passing an order of arrest, the trial Court has not considered as to whether the respondent/decree holder had established the fact that the revision petitioner had sufficient means to pay the decree amount and the trial Court had committed an error in inferring that the Settlement Deed executed by the revision petitioner in favour of his brother is only to cheat the decree holder and prayed for setting aside the order.

6. The respondent counsel has made submissions in support of the order passed by the Principal Sub-Court, Tiruppur.

7. After going through the order, I find that on behalf of the petitioner P.W.1 and P.W.2 were examined and Exhibits P1 to P4 were marked. On behalf of the respondent namely judgment debtor R.W.1 and R.W.2 were marked and Exhibits R1 to R5 were also marked.

8. Since there was an allegation against the Senior Bailiff with regard to the manipulation in the service of summons and also entries made in the summons in the petition Court has suo moto examined one Santhaseelan, Senior Bailiff and marked as Exhibits C1 to C5. Exhibit C1 is the served summon. Exhibit C2 is the served summon on the General Manager. Exhibit C3 is the served on the General Manager. Exhibit C4 is the acknowledgement served on the General Manager of the Company and the another summon is Exhibit C5.

9. After going through the evidence of C.W.1, the learned Principal Sub Judge, Tiruppur has categorically held that there is a manipulation by the Senior Bailiff at the instance of the judgement debtor. After serving the summons he had manipulated by superscribing another paper and in the chief-examination before the Court. He had stated that he made an endorsement as if there is no General Manager in the summons in the Execution Petition and further admitted that the said endorsement is not true and he was an opportunity for cross-examination also.

10. It is to be stated that the decree holder has filed the Execution Petition for arrest of the judgement debtor on the ground that he has means to pay the amount however resisted to pay the amount and in this case the judgement debtor had initially influenced the Senior Bailiff of the Sub-Court to make suitable entries and thereafter on the enquiry, the Senior Bailiff himself

was examined as Court witness and admitted the manipulations.

11. The specific case of the judgment debtor is that he was earning Rs.3,000/- per mensem. He does not for movable or immovable property in his name. The suit is filed for recovery of sum of Rs.10,89,190/- along with subsequent interest. The decree in O.S.No.130/98 was decreed on 16.10.2020 hence the decree has become final. The Execution Petition has filed for the recovery of decree amount with interest in toto Rs.21,93,759.65/- This is the terminated decree from Sub-Court, Kovilpatti.

12. Based upon the decision reported in CRP(NPD)No.94/2013 dated 11.07.2013, the Execution Court had held that the Sub-Court has jurisdiction to entertain the suit. The decree holder has sent the witness summon to the General Manager, Aasasi Garments where he is working as a Deputy General Manager. The said witness summon, the judgment debtor himself has received and signed as 10.08.2009. As could be seen from Exhibit C5 but however the General Manager has not appeared and hence since the General Manager of the Company has not appeared for giving witness and hence witness warrant was issued to the General Manager in that bailable warrant is Exhibit C3. It was received the officer attached to the said company was examined as P.W.2. The evidence of P.W.2 is that when they went to exhibit the bailable warrant against the General Manager and there is no such post as a General Manager.

13. Based upon the evidence of P.W.2 and the Senior Bailiff who was examined as C.W.1. The Execution Court has rightly come to the conclusion that the revision petitioner-judgment debtor has influenced in a bailable to make some money entry and also to make some manipulation in the bailable warrant issued to the witness and based upon the exhibits and also taking note of the fact that after the deputy in O.S.No.175 of 2001 wherein the judgment debtor has submitted that for compromise and thereby entire property belongs to the family in which the petitioner also had share was allotted to some other person is act of the judgment debtor in entering in compromise is only to evade the execution of the money decree and the Execution Court has rightly appraised the evidence of the Court witness and also Exhibits P1 to P4 has rightly come to the conclusion that nor to evade the decree amount. The judgment debtor has dubiliously entertain his family members to file a suit and clandestiously entered into a compromise before the Court whereby the entire property has been allotted to others and further he also taken effective steps to sell the employment as the Deputy General Manager in the said contention and also influence the Senior Bailiff to pertain as if no such post existing in the Company.

14. Accordingly, the finding of the learned Principal District Judge, Tiruppur that the revision petitioner has means to pay and has taken deliberate action to avoid payment of decreetal amount by creating a partition

deed decree by making a decree and also influence the Senior Bailiff to manipulate the Court summons and witness summons and bailable warrant and hence I am satisfied that the finding rendered by the learned Principal Judge as to the means to pay by the revision petitioner has been established and hence, the order passed by the learned Sub-Judge does not suffer any appeal or warrant interference at the revisional jurisdiction. The learned Principal District Judge, Tiruppur is hereby required to initiate the departmental action against the said Senior Bailiff who had went for in connection with the manipulation of the Court record in service of the summons, service of the witness summons and service of the bailable warrant and complete the disciplinary proceedings against the said Senior Bailiff within a period of 5 months from the date of receipt of a copy of this order.

15. In the result, this Civil Revision Petition is dismissed and the order passed by the Courts below is hereby confirmed. No costs. Consequently, connected C.M.P is closed.

04.12.2020

Internet :Yes
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To

The Principal Subordinate Judge at Tiruppur.

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RMT.TEEKAA RAMAN, J.
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