

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.2288 of 2014

and

CMP.No.1 of 2014

Gnanasundaram ... Petitioner

Vs.

1.Sasikala

2.Pasupathy

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in E.P.No.55 of 2012 in O.S.No.76 of 2004 dated 01.04.2014 passed by the learned Subordinate Judge, Panruti.

For Petitioner

: Mr.S.Ganesh

For Respondents

: M/s.S.Sabarish for

M/s.S.K.Rakhunathan

ORDER

This Civil Revision Petition has been filed by the 2nd respondent/judgment debtor against the order passed in E.P.No.55 of

2012 in O.S.No.76 of 2004 on the file of the Sub Judge, Panrutti dated 01.04.2014.

2.The 1st respondent had filed a suit in O.S.No.76 of 2004 for recovery of a sum of Rs.1,36,000/- with subsequent interest based on the pronote said to have been executed by the petitioner herein and his brother V.Pasupathi (2nd respondent/1st defendant). The said suit was decreed on 14.11.2005. Subsequently the 1st respondent/plaintiff had filed an Execution Petition in E.P.No.55 of 2012 on the file of the Sub Court, Panrutti against the petitioner herein for recovery of the decree amount by attaching his salary of Rs.5,000/- per month. The Executing Court by the order dated 01.04.2014 had allowed the said Execution Petition, directing to attach a sum of Rs.4,000/- per month from the salary of the petitioner herein/Judgment debtor No.2. Feeling aggrieved, the petitioner herein has filed the present Civil Revision Petition.

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3.Heard Mr.S.Ganesh, the learned counsel for the petitioner and Mr.S.Sabarish, learned counsel for the 1st respondent/deGREE holder.

4.The learned counsel for the petitioner has submitted that the petitioner is temporarily working as Conductor in TNSTC, Villupuram depot and getting net salary of Rs.5,167/- only. He further submitted that the petitioner herein had also produced his pay slip before the Executing Court to prove that his net salary was Rs.5,167/- only, but without taking into consideration of the said fact, the Executing Court had passed an order, stating that the learned counsel for the petitioner herein had fairly accepted to attach a sum of Rs.4,000/- per month. But, no such consent has been given either by the petitioner herein or his counsel. He further submitted that, since the petitioner herein is taking only Rs.5,167/- as take home salary, the order passed by the Executing Court is arbitrary and unreasonable and therefore, he prayed to set aside the said order.

5.Per contra, the learned counsel for the 1st respondent/decreed holder has submitted that as per the pay slip produced by the petitioner herein before the Executing Court, he was getting gross salary of Rs.14,714/- per month and taking into consideration of the said fact, the Executing Court has passed an order attaching a sum of Rs.4,000/- per month and in the said order, this Court need not interfere and therefore, he prayed for dismissal of this Petition.

6.A perusal of the pay slip produced by the petitioner shows that, his gross salary for the month of February 2014 was Rs.14,714/-. This Court is of the view that, for attaching the salary, only the gross salary has to be taken into account. As per Section 60 of CPC, salary to the extent of first one thousand rupees and two-thirds of the remainder have to be exempted. Hence, out of Rs.14,714/-, if first one thousand rupees is deducted, it comes to Rs.13,714/-. From that amount, if two-thirds are deducted, it comes to Rs.4,571/-. But the Executing Court has passed an order to attach only a sum of Rs.4,000/- per month. Hence, this Court does not find any infirmity in the said order. Therefore, this Civil Revision Petition is liable to be dismissed.

7.The learned counsel for the petitioner has submitted that, as per the order of this Court, the petitioner has deposited a sum of Rs.50,000/- before the Executing Court and the Executing Court may be directed to adjust the said amount with accrued interest on the decree amount. Hence, the Executing Court is directed to adjust the aforesaid amount with the decree amount and proceed with the Execution Petition in respect of the balance amount alone.

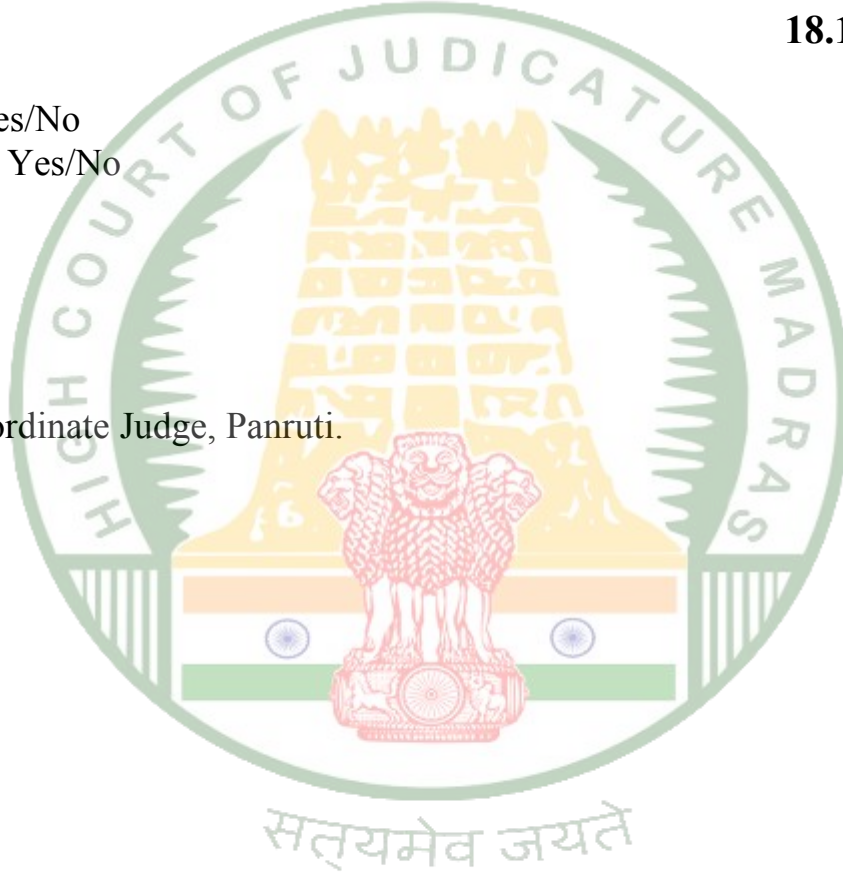
8.In the result, this Civil Revision Petition is dismissed with aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

18.11.2020

Index :Yes/No
Internet : Yes/No
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To

The Subordinate Judge, Panruti.

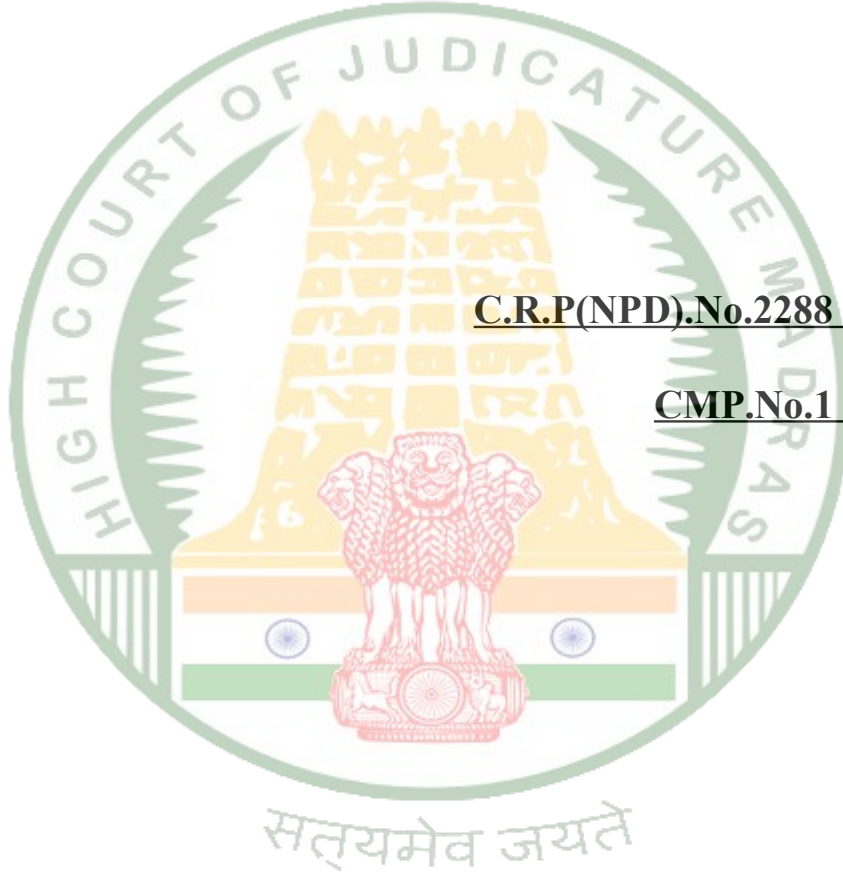


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