

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11.02.2020

Judgment Pronounced on : 01.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No.4165 of 2014

and

M.P.No.1 of 2014

Vasu

.. Petitioner / Judgment Debtor/
2nd Respondent

Vs.

M/s. Shriram City Union Finance Ltd.,
No.123, Angappa Naicken Street,
Chennai – 600 001.

.. 1st Respondent/ Decree Holder/
Petitioner

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Docket order in E.P.4359 of 2013 in A.C.P(SUCF/EF)KV 057/2011 on the file of the IX- Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.K.V.Ananthakrishnan

ORDER

This Civil Revision Petition is filed against the Docket order in E.P.4359 of 2013 in A.C.P(SUCF/EF)KV 057/2011 on the file of the IX-Assistant Judge, City Civil Court, Chennai.

2. One Mr.N.Sundaravadivel availed a Trade Loan from the respondent's George Town Branch on 10.04.2008 for a sum of Rs. 1,50,000/-. To secure the loan amount, the borrower Mr.N.Sundaravadivel furnished two personal guarantors, namely, Mr.Vasu/Petitioner and Mr.Chandrasekar. They have executed the pro-note, loan agreement and other necessary documents in favour of the respondent. All of them have jointly and severally undertaken to repay the loan amount. The borrower agreed to pay interest for a sum of Rs.43,512/- for 24 months. Hence, the borrower along with the petitioner was liable to repay a sum of Rs.1,93,512/- to the respondent, at Rs.8,063/- per month commencing from 10.05.2008 to 10.04.2010. For the repayment of the loan cum interest amount, the borrower Mr.N.Sundaravadivel furnished 24 duly filled post-dated cheques to the 1st respondent company. The said post-dated cheques issued by the borrower were returned for funds insufficient.

3. Due to the default committed by the borrower, the respondent finance company invoked the arbitration clause 11 of the loan agreement. Pre-arbitration notice dated 27.05.2011 was sent to the borrower and to the petitioner through RPAD.

4.The 1st respondent filed claim petition before the Sole Arbitrator Mr.K.Vijayakumar on 22.07.2011 for a sum of Rs.2,20,366/- with 36% interest. The sole Arbitrator conducted hearing and enquiry as per the procedure laid down in the Arbitration and Conciliation Act, 1996. Due to non-appearance of the petitioner and the borrower Mr.N.Sundaravadivel, the Sole Arbitrator on merits passed an exparte award against them directing them to pay a sum of Rs.2,20,366/- with 36% interest on the due amount of Rs.1,21,073/- from the date of filing of claim petition till 22.06.2011 and thereafter at 18% till the date of realisation and also the litigation cost Rs.5,000/-.

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5. The copy of the Award was sent to the petitioner, borrower and other sureties. Since no payment was made, Execution Petition No.4359 of 2013 was filed claiming a sum of Rs.2,79,396/- from the petitioner through

attachment of salary under Order XXI Rule 48 & 48A of the Civil Procedure Code.

6. Heard both side and perused the records.

7. The Execution Court issued notice to the petitioner through Court as well as privately. Even after service of notice, the petitioner did not appear to raise his objections if any. Hence, the Court ordered pro-order to the garnishes of the petitioner.

8. After receiving the arbitral notice, the petitioner failed to appear before the Sole Arbitrator to contest the case. Having received the summon and failure to make appearance by himself, the petitioner cannot allege that the Sole Arbitrator passed an ex parte award without following the procedure laid down under the said Act. Further when the award was not challenged by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, the award passed by the Sole Arbitrator becomes final and cannot be questioned in execution proceedings.

9. The petitioner is the guarantor had signed the pro-note and loan agreement by undertaking to repay the loan amount. Further, the pro-order was issued, after service of Court notice to the petitioner. The execution Court issued notice to the petitioner to appear on 25.02.2014 and private notice was ordered to the petitioner. The private notice was served to the petitioner and the proof for service of notice was filed, thereafter, the Court ordered attachment of salary of the petitioner. Based on the said order, batta was filed for issuing pro-order to the garnishee of the petitioner.

10. Therefore, the Execution Court did not violate any procedural irregularity, while ordering the attachment of salary. Hence, the attachment order passed by the Execution Court is valid in law and there is no procedural violation in passing of the order. No valid ground is made in the revision.

11. In the result, this Civil Revision Petition is dismissed. No Costs.

Connected M.P. is closed.

01.06.2020

Index : Yes/No
Internet: Yes/No
PJJ

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To

1. The IX- Assistant Judge,
City Civil Court, Chennai.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



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C.R.P.No.4165 of 2014

RMT.TEEKARAMAN, J.

PJL



**Pre-delivery
Order made in
C.R.P.No.4165 of 2014 and
M.P.No.1 of 2014**

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01.06.2020