



WEB COPY

C.R.P. (PD)(MD)No.473 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (PD) (MD)No.473 of 2020
and
C.M.P(MD)No.2914 of 2020

S.Siva Kumar

.. Petitioner

Vs.

K.Ponnusamy

.. Respondent

PRAYER : Civil Revision Petition filed under Article 115 of C.P.C. to set aside the Fair and Decreetal Order dated 17.12.2019 passed in E.A.No.233 of 2019 in E.P.No.187 of 2018 in O.S.No.631 of 2016 on the file of the Principal Subordinate Court, Karur by allowing this Revision Petition.

For Petitioner : Mr.K.Balasubramani

ORDER

The petitioner is the respondent in E.P.No.187 of 2018 and the defendant in the suit in O.S.No.631 of 2016. The respondent has filed a suit in O.S.No.631 of 2016 on the file of the Principal Subordinate Court, Karur, against the petitioner for recovery of money. The said suit was decreed on 30.06.2017 and the respondent has filed an Execution Petition in E.P.No.187 of 2018 before the Principal Subordinate Court, Karur. During the pendency of the Execution Petition, the petitioner filed a petition to set aside the exparte decree and also he filed an Execution Application in E.A.No.233 of 2019 to set aside the exparte order passed by the Execution Court under Order 21, Rule 106 and Section 151 of Civil Procedure Code.

2.The Execution Court has allowed the said Execution Application on condition to deposit 50% of decree amount and the respondent herein, petitioner in the Execution petition also made an endorsement that if 50% of decree amount is deposited,



he had no objection to allow the petition and set aside the exparte decree passed by the Execution Court. Based on the endorsement made by the Execution petitioner, the Execution Court also passed an order directing the petitioner herein to deposit 50% of decree amount. Challenging the said order, now the petitioner herein / defendant in suit has filed the present revision before this Court.

3.The learned Counsel appearing for the petitioner would submit that it is only an exparte order and in order to arrest the petitioner, without executing the order straight away issued warrants and hence, prayed for allowing this Civil Revision petition.

4.Heard and perused the entire materials available on record.

5.Admittedly, the respondent has filed a suit against the petitioner in O.S.No.631 of 2016 for recovery of money and the suit was also decreed for a sum of Rs.7,65,600/-. After the decree, the respondent has filed an Execution petition in E.P.No.187 of 2018 for arrest. Since the petitioner herein did not appear before the Execution Court, an ex-parte order was passed by the Execution Court. To set aside the exparte order, the petitioner filed a petition before the Execution Court under Order 21 Rule 106 and Section 151 of Civil Procedure Code.

6.Considering the nature of decree and also the attitude of the petitioner and also the endorsement made by the respondent herein / petitioner in the Execution petition, the Executing Court has passed the conditional order to deposit 50% of decree amount within a stipulated time and for compliance report, post on 06.02.2020. Challenging that order, the petitioner has filed this Civil Revision Petition. Even though the Execution Petition was filed for recovery of money, the suit was decreed on 30.06.2017 and the petitioner has not paid any decree amount. Subsequently after one year, the respondent has filed Execution Petition. Even in the Execution Proceedings, the petitioner remain ex-parte. Subsequently, he filed a petition to set aside the exparte order. The Trial Court has rightly directed the petitioner to deposit 50% of decree amount and therefore, there is no reason to interfere with the order passed by the Executing Court and this Court finds no merits in this revision and the Civil Revision Petition is liable to be dismissed.



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7. Accordingly, the Civil Revision petition is dismissed. However, the petitioner is directed to deposit 50% of decree amount as directed by the Executing Court on or before 31.03.2020 and if he fails to deposit the same before the Execution Court on or before 31.03.2020, the Executing Court is directed to proceed with the Execution Petition in E.P.No.187 of 2018 in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Karur.

+1cc to Mr.K.Balasubramani, Advocate Sr.No.12316

AKM/06.05.2020 /3P-3C/

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