



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.02.2020

Delivered on : 10.07.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.1659 of 2019

Mrs.Anaglit Ammal :Petitioner/Petitioner/
Judgment Debtor/Defendant

Vs.

Tamil Nadu Electricity Board,
Rep by its Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin.

:Respondent/Respondent/
Decree Holder/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of Civil Procedure Code, to call for the records pertaining to E.A.No.5 of 2018 in E.P.No.45 of 2014 in O.S.No.13 of 2007 dated 11.01.2019 on the file of the learned 1st Additional District Judge, Tuticorin and to set-aside the same.

For Petitioner : Mr.Ananth C.Rajesh

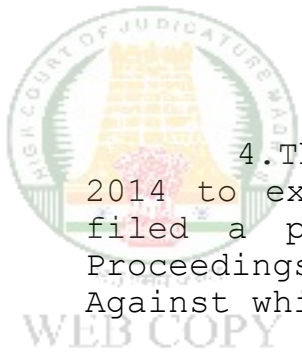
For Respondent : Ms.M.Parameswari

ORDER

This petition has been filed against the order passed in E.A.No.5 of 2018 in E.P.No.45 of 2014 in O.S.No.30 of 2007 dated 11.01.2019 on the file of the 1st Additional District Judge, Tuticorin.

2.The petitioner is the defendant/Judgment Debtor and the respondent is the plaintiff/Decree Holder in the suit.

3.The respondent filed a suit in O.S.No.13 of 2007 for a prayer of recovery of money. The suit was decreed on the basis of an order in W.A.No.594 of 2008 dated 20.12.2010 and 15.02.2011.



4.The respondent filed an Execution Petition in E.P.No.45 of 2014 to execute the decree. In that petition, the judgment debtor filed a petition in E.A.No.5 of 2018 to reject the Execution Proceedings. That petition was dismissed by the Execution Court. Against which, the petitioner preferred this revision.

5.The brief substance of the petition in E.A.No.5 of 2018 is as follows:-

The petitioner was a lessee of the Tamil Nadu Fisheries Development Corporation, Tuticorin. During the period 28.11.2000 to 28.11.2003, the petitioner has taken an Ice Factory for lease and she obtained electricity connection in Service Connection No.298. The Ice Factory was in a dilapidated condition and it required renovation. Within three months from the date of lease, the respondent sent a notice that there was energy theft in Service Connection No.298 for a period of three months to the tune of Rs.46,89,224/- and a criminal case in Crime No.661 of 2001 was framed against the petitioner.

6.The case was later taken on file as C.C.No.328 of 2002 on the file of Judicial Magistrate No.I, Tuticorin, and the petitioner was ordered to pay a sum of Rs.46,89,224/- in 15 installments. That order was set aside by this Court in W.P.No.19848 of 2001 and that the matter was sent back for re-consideration. Without proper enquiry, again the respondent gave a findings that the petitioner has to pay the same amount. Again, the petitioner filed another writ petition in W.P.No.135 of 2002. The writ Court ordered the petitioner to deposit a sum of Rs.5,00,000/-. The petitioner challenged that order and filed an appeal in W.A.No.195 of 2002 and that appeal was dismissed on 04.11.2004.

7.Since the Ice Factory was totally dilapidated, the petitioner's husband constructed a new Ice Factory in Door No.219, Threspuram, Tuticorin, and he applied for electricity connection. The respondent has sent a letter dated 27.09.2005, stating that the amount due for the Service Connection Number.298 has to paid before the acceptance of the application of the husband of the petitioner. The husband of the petitioner filed a writ petition in W.P.(MD) No.9339 of 2005 against the letter dated 27.09.2005. That writ petition was dismissed on 11.09.2008. Against which, the husband of the petitioner filed a writ appeal in W.A.No.594 of 2008.

8.The Hon'ble Division Bench of this Court has passed an order dated 20.12.2010, directing the husband of the petitioner to pay a sum of Rs,2,50,000/- directly as part payment within a period of 4 weeks i.e., on or before 31.01.1011 and has directed the respondent to give electricity connection for Door No.219, Threspuram, Tuticorin. The balance amount of Rs.32,00,000/- has to be paid in 32 monthly installments. A sum of Rs.40,000/- per month



has to be paid for 81 month and Rs.10,000/- has to be paid for the last month and the payment to commence from February 2011.

9.The respondent after getting permission from his superior had filed a report before the Fast Track Court, Tuticorin in O.S.No.30 of 2007. Contrary to the terms of the compromise, the respondent did not close the suit and kept the suit pending. On false representation, the respondent obtained a decree in the suit dated 21.08.2014 and that decree is not valid under the provision of Section 145 of the Tamil Nadu Electricity Act, 2003.

10.The Tamil Nadu Electricity Board framed new rules for the recovery of the balance amount. The respondent also received the cost of the suit as per the order in the writ appeal. The criminal case in Spl.C.C.No.4 of 2013 on the file of the learned Principal District Judge, Tuticorin, ended in acquittal and that it is clearly proved that the petitioner has not committed any energy theft. Since, the petitioner has not committed any energy theft, she is not liable to pay any amount to the Electricity Board. In such circumstance, the respondent has taken steps to attach the property of the petitioner. The decree itself is fraud and nullity and the Execution Petition filed on the basis of the decree is not valid and it has to be set aside.

11.Brief substance of the counter filed by the respondent is as follows:-

Energy theft in Service Connection No.298 was traced out and a penalty of Rs.46,89,224/- was imposed on the petitioner. A criminal case in Crime No.669 was lodged and the case was taken on file in C.C.No.338 of 2002. Though, the High Court ordered the petitioner to pay a sum of Rs.5,00,000/- in W.P.135 of 2002, the petitioner has disobeyed that order and filed a writ appeal and the same was dismissed. To defraud the respondent, the petitioner filed a writ petition in WP.No.9339 of 2005 and writ appeal in W.A.No.594 of 2008.

12.As per the order of the High Court dated 20.12.2010, the petitioner has to pay a sum of Rs.2,50,000/- as part satisfaction of the amount due within a period of four weeks i.e., on or before 31.01.2011 and on condition of such deposit, electricity connection in the name of the petitioner's husband has to be given, and that balance Rs.32,00,000/- has to be given in 82 monthly installments, that is Rs.40,000/- per month has to be paid for 81 months and Rs.10,000/- has to be paid on the last month. Further, liberty was given to the respondent to take action in accordance with law, if the petitioner failed to pay the amount due for two consecutive months, the respondent filed a report in O.S.No.13 of 2007 after getting approval from the Tamil Nadu Electricity Board.



13. On the basis of the High Court direction, a decree was passed in O.S.No.13 of 2007. Payment of EMI started from February 2011. In the Lok Adalat conducted by the High Court, the petitioner agreed to pay a sum of Rs.28,92,250/-, which was payable in 36 installments along with a Court fee of Rs.3,51,692/- and sum of Rs.2,56,093/- for the delay in settlement and to that effect an affidavit was filed by the petitioner. The petitioner failed to pay the monthly installments as agreed by her. The petitioner did not file any appeal against the decree passed in O.S.No.13 of 2007. That decree is valid and Section 145 of the Electricity Act is not a bar for the suit. The respondent is entitled to file an Execution petition for executing the decree. The Acquittal in the criminal proceedings will not be binding upon the civil Court. Section 47 of CPC is not applicable to this case. The petition has to be dismissed.

14. After considering both sides, Trial Court dismissed the petition. Against which, the revision petitioner preferred this revision.

15. The case of the revision petitioner is that the Ice Factory functioned only for three months and that the criminal case ended in acquittal and that as per the orders in the writ appeal, the respondent did not close the case and that the Civil Court cannot pass a decree. The decree of the civil Court, on the basis of the orders in the writ appeal in W.A.No.584 of 2008 is wrong and it amounts to *res-judicata* and the decree itself is a nullity and that Execution proceedings on the basis of the decree has to be rejected. A civil suit for recovery of amount due for Electricity Board is barred under Section 147 of the Tamil Nadu Electricity Act. Only after a default for a period of two months, the respondent can take action in accordance with law and the decree should have been passed only after such non-payment or after the 31st month. But the civil court decree was passed within three months from the date of order in the writ appeal and the same is not valid.

16. On the side of the revision petition it is stated that the petitioner took the Ice Factory for lease. Within three months from the date of lease, the respondent issued a show cause notice on 31.07.2001 demanding a sum of Rs.46,89,224/- within a period of three months. Hence, the petitioner filed a writ petition and the same was allowed by directing the respondent to conduct a fresh enquiry. Once again, the respondent without conducting a proper enquiry, gave the same assessment and again the petitioner filed a writ petition and the Court has ordered the petitioner to pay a sum of Rs.5,00,000/- as a conditional order. Due to the illness of the husband of the petitioner, she was not able to pay the amount. Hence, the petitioner preferred a writ appeal. That writ appeal was dismissed and the conditional order was not complied by the



17.On the side of the revision petitioner, it is stated that the husband of the petitioner started a new plant in his own land and that the Electricity Board gave a temporary connection for the construction of his new Ice Factory and that when the husband of the petitioner approached the Electricity Board for a permanent electricity connection, the officials of the Electricity Department refused the same stating that the petitioner is having dues and insisted the husband of the petitioner to pay that dues.

18.On the side of the revision petitioner, it is stated that the husband of the petitioner filed another petition writ and that writ petition was dismissed on the ground that the respondent is empowered to refuse to give electricity connection.

19.In the writ appeal in W.A.No.594 of 2008 filed by the petitioner's husband, this Court has directed the husband of the petitioner, to pay a sum of Rs.2,50,000/- as initial amount. The petitioner paid that amount. The balance amount has to be paid in 82 monthly installments. The petitioner paid 29 monthly installments. Due to the illness of the husband of the petitioner, she failed to pay three months installments. Immediately, the respondent disconnected the electricity Connection.

20.On the side of the petitioner, it is stated that under Section 145 of the Tamil Nadu Electricity Act, the jurisdiction of the Civil Court is barred and that when the order of the writ appeals was incorporated in a civil decree, that amount to *res-judicata* under Section 11 of CPC.The Electricity Board is having its own mechanism for collecting arrears and the respondent is wrong in selecting the civil forum. Within a period of three months from the date of default, action was taken by the respondent and that the respondent has to take action only after the 82nd EMI and hence, the Execution Proceedings has to be rejected.

21.On the side of the respondent, it is stated that the petitioner is a chronic defaulter. The petitioner failed to obey the orders of the Court. The petitioner filed an undertaking affidavit before the Writ Appellate Court. The electricity connection for the petitioner's new Ice Factory was given only due to the order in the Writ Appeal. The domestic service connection for the petitioner's house could not be disconnected due to the interim stay in the writ petition filed by the petitioner.

22.On the side of the petitioner, it is stated that the proceedings before the Civil Court is barred under Section 145 of Tamil Nadu Electricity Act, 2003, which reads as follows:-

"145. Civil Court not to have jurisdiction - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an



assessing officer referred to in section 126 or an Appellate Authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

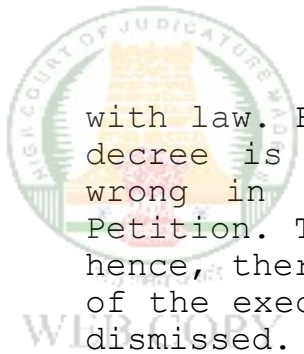
23. An observation of the Section makes it clear that,
"The civil suit as per section 145 is barred with regard to assessment under Section 126 by the assessing officer for unauthorized use of electricity or the matters coming within the purview of the appellate authority under Section 127. The bar under Section 145 would not bar the assessment made under regulation 23 AA of Tamil Nadu Electricity Supply Code or the theft of energy under Section 135 of Electricity Act."

-In view of the above, it is decided that the Execution proceeding is not barred under Section 145 of the Tamil Nadu Electricity Act, 2003.

24. On the side of the petitioner, it is stated that there is *res-judicata* and the order in writ appeal cannot be incorporated in the civil suit and that the suit is barred by *res-judicata* under Section 11 of CPC. The order in the writ appeal was passed on an undertaking affidavit filed by the petitioner and her husband. The Writ Appellate Court has directed a report to be submitted before the Civil Court and the Civil Court is duty bound to obey the orders of the High Court. Incorporating the order of the High Court in a civil suit will not amount to *res-judicata* and the decree of the Trial Court is not barred under section 11 of CPC.

25. On the side of the petitioner, it is stated that the civil Court can pass a decree only after the default of two monthly installments by the petitioner and that the Trial Court has no authority to pass a decree within three months from the date of writ appeal. As soon as a report is filed before the Civil Court, the Civil Court has to pass a decree and the respondent need not wait for a default in payment for two months to get a decree.

26. The petitioner has accepted the decree and has paid monthly installments for a period of 29 months. Hence, the petitioner has no *locus standi* to question the decree. The respondent need not close the civil proceedings till the undertaking given the writ appeal was fulfilled by the petitioner. Hence, the decree is valid and is binding upon the petitioner. Admittedly, there was default in payment, and as per the order passed in the Writ Appeal, the respondent is at liberty to proceed in accordance



with law. Filing an execution petition on the basis of a Civil Court decree is a proceeding in accordance with law. There is nothing wrong in the action of the respondent in filing the Execution Petition. There is no merits in the petition in E.A.No.5 of 2017 and hence, there is nothing sufficient enough to interfere in the orders of the execution Court. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

To

1.The 1st Additional District Judge,
Tuticorin.

2.The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

order
made in

C.R.P. (PD) (MD) .No.1659 of 2019
10.07.2020

dss

SDS (17.07.2020) 7P-4C