



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P.(MD) No. 298 of 2017
and C.M.P. (MD) No. 1431 of 2017

Ayyappan

... Petitioner/Petitioner/Respondent
/1st Defendant

vs.

The State Bank of India,
Gullapuram Branch,
Periyakulam Taluk, through its
Branch Manager

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER : Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decreetal Order dated 29.09.2016 made in E.A. No.44 of 2013 in E.P. No. 101 of 2012 in O.S. No.326 of 2004 on the file of the District Munsif Court, Periyakulam.

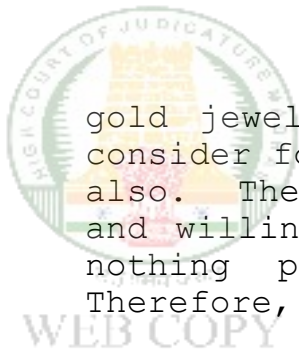
For Petitioner : Mr. J. Lawrance
For Respondent : Mr.S. Ananth C.Rajesh

ORDER

This petition has been filed against the Fair and Decreetal Order, dated 29.09.2016 made in E.A. No.44 of 2013 in E.P. No. 101 of 2012 in O.S. No.326 of 2004 on the file of the learned District Munsif Court, Periyakulam.

2. The respondent herein has filed a suit in O.S. No. 326 of 2004 for recovery of loan and the same was partly allowed by order, dated 15.11.2005. Thereafter, based on the aforesaid order, the respondent herein has filed an execution petition in E.P. No. 101 of 2012 in O.S. No.326 of 2004. Thereafter, revision petitioner herein has filed an execution application E.A. No.44 of 2013 in E.P. No. 101 of 2012 in O.S. No.326 of 2004 under Section 47 of C.P.C., and the same was dismissed on 29.09.2016 by the learned District Munsif, Periyakulam. Aggrieved over the same, the Civil Revision Petition has been filed.

3. The grievance of the Civil revision petitioner is that the petitioner has clearly stated that he is always willing to refund the borrowed amount together with interest subject to return of the



gold jewels weighing 108 grams, but the respondent Bank did not consider for such return of the loan after the execution proceedings also. The further grievance is that when the petitioner is ready and willing to settle the borrowed amount together with interest, nothing prevents the respondent bank to return the jewels. Therefore, the order of the Court below is liable to be set aside.

4. The learned counsel appearing for the respondent herein submitted that the civil revision petition is not maintainable and the revision petitioner is not a liable person to file the execution application in E.A. No.44 of 2014 in E.P. No. 101 of 2012 in O.S. No.326 of 2004, under Section 47 of C.P.C. He further submitted that the prayer sought for in the execution application is new relief and since the pledged jewels are not gold the bank is not liable to pay to the revision petitioner. He further submitted that the revision petitioner has filed the E.A. for the purpose of drag on the proceedings.

5. The Court gave due consideration to the submissions of the learned counsel.

6. In view of the facts of the case, the objector (revision petitioner) is the defendant in the suit and the suit was decreed on 15.11.2005 after considering the averments stated in the plaint and the written statement in the suit. Therefore, the Court below has considered all the objections of the revision petitioner in the written statement filed before the Court below. Again, the revision petitioner has filed E.A with the same set of allegations. Further, the revision petitioner has raised new plea in E.A that he had pledged jewels and received amount. He pledged 108 grams with the respondent Bank and the respondent Bank is ready to pay the amount, but the gold are not real gold as per respondent's counter.

7. The learned counsel appearing for the revision petitioner has relied upon the Judgement in **2001(2)CTC, 331, Kamalavathy Vs. B. Subramanian**. The relevant portion in the aforesaid Judgment is extracted hereunder;

"8.In view of the fact that the parties cannot raise any question relating to execution by separate suit and that Section 47 is their only recourse the Court below ought to have considered all the question raised by the petitioner. However, Section 47 cannot be used as a devise to all the questions that the Judgment-debtor could have raised but failed to. "

From the above, the revision petitioner cannot raise new plea in E.A. which was filed under Section 47 of C.P.C. Already passed the valued decree for execution.



8. The object of Section 47 of C.P.C is very limited and the Section 47 of C.P.C., is extracted hereunder;

"Section 47 : Question to be determined by the Court executing decree:-

(1). All questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution; discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit."

9. The executing Court cannot go beyond the decree. As per Section 47 of C.P.C., the executing Court can decide the issues relating to execution of decree, discharge or satisfaction of decree not all the objections raised by the defendant in the written statement. Therefore, the learned District Munsif, Periyakulam has rightly dismissed the E.A. No.44 of 2014 in E.P. No.101 of 2012 in O.S. No. 326 of 2004. This Court finds no valid grounds to interfere with the findings of the Court below.

10. In fine, the Civil Revision Petition stands dismissed with Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The District Munsif Court, Periyakulam.

+1 CC to Mr.J.LAWRANCE, Advocate SR.No.26280

+1 CC to Mr.ANANTH C.RAJESH, Advocate SR.No. 26405

Order made in

C.R.P. (MD) No. 298 of 2017

18.12.2020

CK (CO)

TR(04.01.2021) 3P 4C