

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).Nos.4141 to 4144 of 2009
and M.P.Nos.1, 1, 1 & 1 of 2009

S.P.Sivanandan

*... Petitioner/Judgement Debtor No.3
in all CRPs*

Vs.

1.Uthamipalanivel

2.Erode Spinning Mills (P) Ltd.,
rep. by S.P.Damodaran
D.No.23, Ramanathapuram Pudur (Post),
Bhavani Main Road,
Erode.

3.S.P.Damodaran

4.Sivagami

... Respondents in CRP.No.4141/2009

1.A.P.Jagadesan

2.Erode Spinning Mills (P) Ltd.,
rep. by S.P.Damodaran
D.No.23, Ramanathapuram Pudur (Post),
Bhavani Main Road,
Erode.

3.S.P.Damodaran

4.Sivagami

... Respondents in CRP.No.4142/2009

1.Eswaramurthy

2.S.P.Damodaran

... Respondents in CRP.No.4143/2009

1.M.S.Karthikeyan

2.S.P.Damodaran

... Respondents in CRP.No.4144/2009

Prayer in CRP.No.4141/2009: The Civil Revision Petition filed under Section 115 CPC against the Order passed in E.P.No.154 of 2006 in O.S.No.885 of 1993 on the file of I Additional Subordinate Judge, Erode dated 03.09.2009.

Prayer in CRP.No.4142/2009: The Civil Revision Petition filed under Section 115 CPC against the Order passed in E.P.No.155 of 2006 in O.S.No.794 of 1993 on the file of I Additional Subordinate Judge, Erode dated 03.09.2009.

Prayer in CRP.No.4143/2009: The Civil Revision Petition filed under Section 115 CPC against the Order passed in E.P.No.276 of 2006 in O.S.No.883 of 1993 on the file of I Additional Subordinate Judge, Erode dated 03.09.2009.

Prayer in CRP.No.4144/2009: The Civil Revision Petition filed under Section 115 CPC against the Order passed in E.P.No.293 of 2006 in O.S.No.795 of 1993 on the file of I Additional Subordinate Judge, Erode dated 03.09.2009.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : No appearance

COMMON ORDER

(Heard through video conferencing)

These Civil Revision Petitions have been filed, challenging the Order of arrest passed by the Executing Court to arrest the petitioner in all 4 Execution Petitions in E.P.Nos.154, 155, 276 & 293 of 2006.

2. The above Execution Petitions have been filed to execute the Decrees obtained by the plaintiffs in all the Original Suits in O.S.Nos.885, 794, 883 & 795 of 1993. In all the four suits, the defendant is the same but only the plaintiffs are different.

3. Since the issue involved in these Revision Petitions and the defendant is the same, they are taken up together and being disposed of vide a common order.

4. The learned counsel for the petitioner submitted that all the four decrees are for recovery of money against the first defendant. The petitioner herein is the third defendant in the above suits. In O.S.No.794 of 1993, which relates to E.P.No.155 of 2006 and C.R.P.No.4142 of 2009, this defendant along with the defendants 2 and 4 have been exonerated. Even the decree of the Court would show that the suit has been decreed only as against the first defendant and it has been dismissed as against the defendants 2 to 4. Despite the same, the Execution Petition has been filed against this petitioner also and Executing Court has passed an Order of arrest against this petitioner also in a mechanical fashion, without noticing the fact that the suit has been decreed only against the first defendant. Since this petitioner is not bound by the decree passed in O.S.No.794 of 1993, the decree cannot be executed against him by way of arrest. Hence the Order of

arrest passed against the petitioner, who was the third defendant in the suit itself, is factually and legally wrong.

5. So far as the other three Civil Revision Petitions are concerned, the learned counsel for the petitioner invited the attention of this Court to the evidence of the decree holder in O.S.No.885 of 1993 (connected to C.R.P.No.4141 of 2009). The decree holder has been examined as a witness in the Execution Proceedings in E.P.No.154 of 2006 and has stated during his cross examination that this petitioner is not concerned with the affairs of the Company and he has further stated that the Company has assets worth of Rupees Five Crores and that the first defendant – Mill is still functioning. Under such circumstances, the Executing Court has passed an Order of arrest to arrest the petitioner who was the past Director of the Company.

6. In the Order of the Executing Court, it has been observed that just in order to defeat the decree obtained against the defendants, this petitioner has falsely stated that he is not related to the affairs of the Company and he is collusive with the other defendants. Whatever may be the case, the records would show that the Company has got assets sufficient enough to realise the decretal amount. It was not denied that the first defendant - Mill is being run and in that case, the movable

properties belonging to the first defendant - Mill will also be available for attachment. Before requesting an Order for arrest, the plaintiffs could have opted to execute the decree by way of attaching the property belonging to the first defendant Mill.

7. Hence, I am inclined to allow the Writ Petition by setting aside the order of arrest passed by the Executing Court. If the Execution Petitions filed by the plaintiffs is at the verge of limitation, it is up to the decree holder to take steps to amend the Execution Petition appropriately.

In the result, the Civil Revision Petitions in C.R.P.Nos.4141, 4142, 4143 and 4144 of 2009 are allowed and the order of arrest dated 03.09.2009 passed in E.P.Nos.154, 155, 276 & 293 of 2006 are hereby set aside. Before closing the Execution Petitions consequent to this order, the Executing Court may give an opportunity to amend the Execution Petitions on merits and at the option of the Decree holder, and thereafter pass appropriate orders. No costs. Connected miscellaneous petitions are closed.

17.06.2021

Speaking/Non-speaking

Index : Yes/No

Sni

R.N.MANJULA,J.

Sni

To

1.I Additional Subordinate Judge,
Erode

2.The Section Officer,
V.R.Section,
High Court, Madras.



C.R.P.(NPD).Nos.4141 to 4144 of 2009

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