

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. NPD.No.271 of 2021
and
C.M.P.No.2529 of 2021

1.S.Shanthamurthy

2.S.Masilamani

...Petitioners

Vs

1.R.Kaliamurthy

2.A.Subramani

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the docket order dated 22.12.2020 made in E.P.No.74 of 2016 in O.S.No.60 of 2009 on the file of the learned Subordinate Judge, Tindivanam.

For Petitioners : T.Dhanasekaran

O R D E R

The prayer sought for in the revision petition is to set aside the docket order dated 22.12.2020 made in E.P.No.74 of 2016 in O.S.No.60 of 2009 on the file of the learned subordinate Judge, Tindivanam.

2. The learned counsel for the petitioner would submit that the Court below has gone beyond the scope of earlier order passed by this Court in C.R.P.No.3005 of 2019, wherein in paragraph 7 this Court has specifically ordered as under:

"7. In view of the matter, this Court is inclined to dispose of the revision petition with a direction that, the respondents shall pay Rs.10,000/- in every hearing. Accordingly, this Court directs the Execution Court to post the E.P.in every month for the purpose of making part payment by the judgment debtors and in the meanwhile if the judgment debtors want to make bulk payment, the Execution Court can act upon. That apart, no direction can be

given to the Execution Court to expedite the E.P. to dispose of with a time, since huge number of suits and other cases are pending".

Further, the learned counsel for the petitioner submits that the Court below failed to note that the petitioners have paid the amount as per the order of this Court up to 04.03.2020 without any default. Thereafter, from 07.04.2020, the petitioners were not able to pay the amount because of the National Lockdown due to "COVID-19 Pandemic". The Court below ought to have considered the lock down and issued direction keeping in mind the observation of the Court dated 25.09.2019 made in C.R.P.No.3005 of 2019. However, without appreciating the order of this Court, the Court below has directed to pay the entire amount on 26.11.2021. The Court below ought to have considered the paying capacity of the petitioners at the time of National Lock down due to COVID-19 pandemic. Hence, the learned counsel for the petitioners prays for allowing this petition.

3. Heard the learned counsel for the petitioners and perused the materials placed on record.

4. A perusal of the materials adverted to by the learned counsel for the petitioners clearly reveal that considering the financial capacity of the petitioners, this Court had. vide its earlier order dated 25.09.2019, ordered for payment of a sum of Rs.10,000/- every month and , but for the lock down due to COVID-19 Pandemic, the petitioner has not paid the amount since April, 2020. It is to be pointed out that the entire Nation was facing a calamitous situation from the end of March, 2020 and very many orders have been passed by this Court as well as the Hon'ble Supreme Court relating to payment due on the part of the debtors. It has been observed therein, that a lenient approach should be taken in the matter of repayment, more specifically when the situation was grave, as it had affected the life and sustenance of the citizens around the entire globe. When this Court, even during the earlier round of litigation, keeping in mind the financial capacity of the petitioners, has ordered payment of a particular sum every month, the Court below, in a lockdown situation, when the livelihood of the petitioners itself was at stake, ought not to have directed the petitioners to pay the entire amount, which is nothing but going beyond the orders passed by this Court and clearly shows non-application of mind on the part of the Court. Therefore, this Court is of the considered view that the order passed by the Court below deserves to be set aside and the Court below is directed to adhere to the directions issued in the order passed by this Court in C.R.P.No.3005 of 2019.

5. This Civil revision petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Principal Subordinate Judge
Principal Subordinate Court
Thindivanam

+1 Cc to Mr.T. Dhanasekaran, Advocate sr 10388.

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JP(CO)
SP(25/03/2021)