

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU

C.R.P. (NPD) No. 1588 of 2015

Shriram Transport Finance Company Limited,
No. 1/398, R.R.Complex, Trichy Main Road,
Thanjavur,
Rep. by its Authorised Signatory. ... Petitioner

-VS-

1. K.Prabhakaran
2. R.Venkatesh ... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decreetal order in E.P. No. 62 of 2013 in Arb. Case No. 15 of 2012 on the file of the District Principal Court, Thiruvarur.

For Petitioner : Mr. G.Balaji
for Mr. K.S.Ramakrishnan

For Respondent : No appearance (for R1)
R2 – Refused

ORDER
(through video conference)

There is no representation for the First Respondent when the matter is called at 11.15 a.m. Since the notice served on the Second Respondent had been returned with the postal endorsement 'refused', it is deemed to be served on him.

2. Heard Mr. G.Balaji representing Mr. K.S.Ramakrishnan, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

3. The Petitioner had obtained an arbitral award dated 28.06.2012 in A.R.C. No. 15 of 2012 for a sum of Rs. 4,35,795/- with interest at the rate of 18% p.a. against the Respondents. The Petitioner had filed the Execution Petition in E.P. No. 62 of 2013 before the Principal District Court, Tiruvarur (hereinafter referred to as the 'Execution Court' for short) for realizing the amount due under the said award, which is executable as decree in terms of Section 36 of the Arbitration and Conciliation Act, 1996, and had sought for attachment of the property of the First Respondent to the extent of 0.18.5 Ars. 0.46 Cent in Survey No. 196/4B, No. 10 Poovanur Village, Needamangalam Taluk, Tiruvarur District, Needamangalam Sub-Registration District, Nagapattinam

Registration District. The Execution Court by an order dated 15.10.2014 held that the Execution Petition filed under Rules 22, 54 and 64 of Order XXI of the Code of Civil Procedure, 1908, related to immovable property, which was not standing in the name of the First Respondent, but standing in the name of one Ramadoss S/o. Subramanian, which could not be attached and dismissed the same. Aggrieved thereby, the Petitioner has filed this Civil Revision Petition.

4. The contention of the Petitioner in this Civil Revision Petition is that the property sought to be attached had been purchased by the First Respondent on 09.04.2007 from one S.Santhanaraman and the Petitioner has filed the Execution Petition against him when he was in ownership of that property. It is further stated that the First Respondent had sold the property to one M.Vetriselvan on 26.03.2014 only after the Execution Petition had been filed. The encumbrance certificate in respect of the property has been produced which reflects the said claim made. There is also no reason explained by the Execution Court in the impugned order as to how it had arrived at the conclusion that the said property was standing in the name of one Ramadoss S/o. Subramanian.

5. Having regard to the facts narrated supra, it is evident that the Execution Court has not conducted any proper enquiry on the claim of the Petitioner that the property stood in the name of the First Respondent at the time of filing of

the Execution Petition and the sale in the name of the third party is only subsequent thereto, which would not preclude the Execution Court from granting the relief to the Petitioner, if his claim for attachment of the property has been proved as required by law.

6. In that view of the matter, the impugned order, which cannot be sustained, is set aside and the matter is remitted to the Execution Court for fresh adjudication on merits in accordance with law. The Execution Petition shall be listed before the Execution Court on 09.06.2021 and the Petitioner shall appear on the said date and the Execution Court shall ensure that notice has been served on the Respondents for appearance on the said date. The Petitioner shall also take steps for impleading the purchaser of the property, viz., M.Vetriselvan, as party to the Execution Petition. It shall be ensured by the Execution Court that there is atleast one effective hearing every week showing progress of the case. The Execution Court shall expeditiously dispose the Execution Petition and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

7. In the result, the Civil Revision Petition is ordered on the aforesaid terms.
No costs.

24.03.2021

vjt

Index: Yes/No

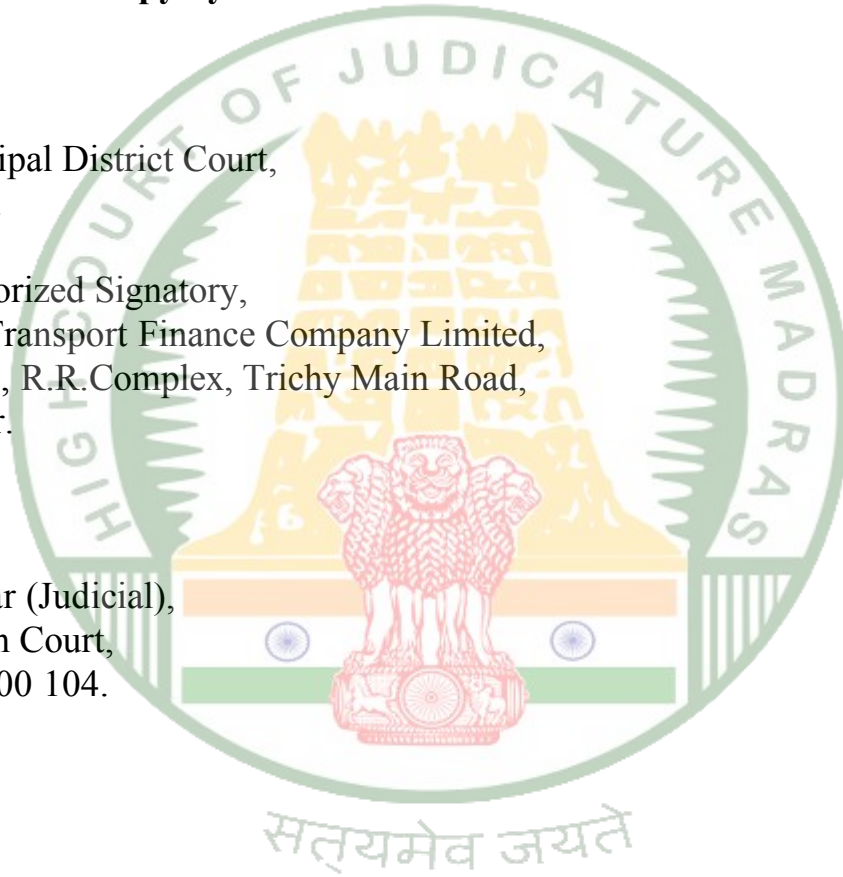
Note: Issue order copy by 08.04.2021.

To

1. The Principal District Court,
Tiruvarur.
2. The Authorized Signatory,
Shriram Transport Finance Company Limited,
No. 1/398, R.R.Complex, Trichy Main Road,
Thanjavur.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

vjt



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