



C.R.P. (NPD) No. 690 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P.(NPD) No.690 of 2019
and C.M.P. No.4500 of 2019

1. M.Ethiraj
2. V.Nithyanandam

...Petitioners

Versus

M/s. Shriram Chits TN PVT LTD,
Represented by its Authorized Representative
A.Jayasundari
Senior Law Officer, No.78, Usman Road,
T.Nagar, Chennai – 17.

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 23.01.2019 in E.A. No.2427 of 2018 in E.P. No.4061 of 2017 in A.R.C. No.409 of 2012 passed by the Hon'ble IX Asst. Judge, City Civil Court, Chennai.

For Petitioner : Mr. K.Balaji

For Respondent : No appearance



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ORDER

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This Civil Revision Petition is directed as against the order passed by the learned IX Assistant Judge, City Civil Court, Chennai, in E.A. No.2427 of 2018 in E.P. No.4061 of 2017 in A.R.C. No.409 of 2012.

2. The respondent herein obtained an arbitration award in A.R.C. No.409 of 2012. The respondent decree holder filed an Execution Petition in E.P. No.4061 of 2017 before the IX Assistant City Civil Court, Chennai, for recovery of a sum Rs.8,71,418/- from the judgment debtors 2 and 4 by way of attachment of salary through the learned Judicial Metropolitan Magistrate who was shown as Garnishee. It is stated that the first respondent in the Execution Petition had taken the chit amount from the decree holder and other respondents stood as guarantor for the said chit amount. Since the judgment debtors did not come forward to repay the chit amount, the respondent decree holder initiated proceedings before the arbitrator and the award was obtained in the year 2012 itself in A.R.C. No.409 of 2012. After the award in A.R.C. proceedings, when the execution petition was filed, the revision petitioners appeared through their counsel to represent their case. Despite several opportunities being given to the judgment debtors particularly the revision petitioners, it appears that they failed



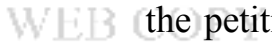
to appear before the Court and did not even file counter when the matter was heard on 05.04.2018. Therefore, an *ex parte* order was passed on 05.04.2018 in E.P. No.4061 of 2017 in A.R.C. No.409 of 2012. To set aside the *ex parte* order dated 05.04.2018, the revision petitioners filed E.A. No.2427 of 2018. The petition filed by the revision petitioners was allowed on the following terms:

“In the result, this petition will be allowed on condition that the petitioners / J.Ds 2 & 4 are directed to deposit a sum of 1/10th of E.P. Claim amount (Rs.8,71,419/- /10) i.e. Rs.87,140/- in to this Court registry towards P.S. Of the award on or before 15.02.2019, in failing which this petition will be dismissed. Call on 18.02.2019.”

Challenging the conditional order directing the petitioner to deposit 1/10th of the claim in the execution petition before the lower Court, the above Civil Revision Petition is filed.

3. The petitioners are the judgment debtors who have suffered an award by which they are jointly and severally liable to pay a sum of Rs.8,71,419/-. The petitioners have also suffered an *ex parte* order. In the petition filed by the petitioners to set aside the *ex parte* order, a condition was imposed to pay 1/10th of the decree amount. The condition is not onerous particularly in view of the admitted facts.

4. It is not in dispute that the award of arbitrator in A.R.C. No.409 of



5. It is admitted that the petitioners stood as guarantors. It is the further case of the petitioners in the Civil Revision Petition that the petitioners are only the guarantors and that they have approached the first judgment debtor who borrowed the money. According to the petitioners, the first judgment debtor told them that he would pay the claim amount. The petitioners, believing the words of the first judgment debtor, did not file any counter at that stage. The liability of petitioners is admitted and the petitioners have no defense in the execution petition. Though the executing Court gave several opportunities to the petitioners, they did not avail any of them. When an *ex parte* order was passed, the petitioners were given indulgence to pay 1/10th of the claim before the executing Court to set aside the *ex parte* order. Even that is also not paid. Admittedly the petitioners have not complied with the condition imposed by the



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Court below. The condition imposed is not onerous.

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6. This Court is unable to find any irregularity in the order dated 23.01.2019 passed by the IX Asst. Judge, City Civil Court, Chennai in E.A. No.2427 of 2018 in E.P. No.4061 of 2017 in A.R.C. No.409 of 2012. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.12.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn

Copy to:

The IX Asst. Judge, City Civil Court, Chennai



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S.S.SUNDAR, J .,

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