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C.R.P(NPD)No.528 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.10.2021

CORAM
The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P (NPD)No.528 of 2015
and
M.P.No.1 of 2015

The Proprietor,
Saravana Stores,
129, Usman Road,
Opp: Panagal Park,
T.Nagar, Chennai 600 017.

.. Revision Petitioner

VS.

M/s. Shriram Chits Tamil Nadu Ltd.,
Madras 600 002.

..Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in E.P.No.990 of 2013 in ARC No.1327 of 2004 dated 15.10.2014, on the file of the X Assistant Judge, City Civil Court.

For Revision Petitioner - M/S.R.N.Amarnath

For Respondent - No appearance



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ORDER

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This Civil Revision Petition is filed against the order passed by the Court below, viz., X Assistant Judge, City Civil Court, Chennai, in E.P.No.990 of 2013, in ARC No.1327 of 2004 dated 15.10.2014.

2. The brief facts of the case are as follows:-

The respondent herein is the decree-holder. He filed an Execution Petition in E.P.No.1992 of 2007 praying to execute the decree passed in ARC No.1327 of 2004, dated 31.03.2005. In the said Execution Petition, judgment debtors 2 and 3 remained absent, hence, attachment of salary of judgement debtors 2 and 3 was ordered and pro order for attachment was also served on the Garnishee of the judgment debtors 2 and 3. On 10.06.2008, as the Garnishee for 3rd judgment debtor remained absent, the attachment order as against the 3rd judgment debtor was made absolute. Thereafter, the respondent-decree holder filed a Petition in E.P.No.990 of 2013, under Order 21 Rule 46 (b) CPC, to direct the garnishee to depart the attached amount from third defendant's salary, viz., R.Iyappan, as per the order, dated 10.06.2008 passed in E.P.No.1992 of 2007. According to the



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respondent/decree holder, the 3rd judgment debtor is working as Salesman in the Proprietary concern, namely, New Saravana Stores (Bramandamai), the revision petitioner herein.

3. It is the contention of the learned counsel for the revision petitioner that the respondent-decree holder filed E.P.No.990 of 2013 praying to execute the decree in favour of the five defendants. Amongst five defendants, the Garnishee of the 3rd defendant is the revision petitioner before this Court. In the Execution Petition, the revision petitioner is not a party but only a Garnishee order has been passed, directing the revision petitioner to attach the salary of R.Iyyappan and discharge the decretal amount in favour of the respondent-decree holder. Aggrieved by the said garnishee order, the revision petitioner approached the Court below and has stated that the 3rd defendant in the suit, is not at all working in their Concern, viz., "Saravana Stores".

3.1 The learned counsel for the revision petitioner pointed out that the impugned order, viz., garnishe order was passed against the Proprietor



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of "Saravana Stores", viz., Mr. Pondurai, and therefore, notice has to be served on the said Mr.Pondurai, Proprietor of Saravana Stores, whereas, the notice was served wrongly to the Proprietor of New Saravana Stores (Bramandamai) situated at No.129, Usman Road, T.Nagar, Chennai, as if the 3rd defendant, Mr.R.Iyyappan is employed under them. The learned counsel further contended "Saravana Stores", and New Saravana Stores (Bramandamai) are two different entities. The respondent-decree holder is quite aware of this fact and in spite the same, they served notice to the revision petitioner herein, viz., Saravana Stores, 129, Usman Road, Opp: Panagal Park, T.Nagar, Chennai 600 017. Though the same was brought to the knowledge of the Court below, the Court below only found fault with the revision petitioner and stated that onus is cast upon on the revision petitioner to prove that the 3rd defendant, Mr.R.Iyyappan is not at all employed under them.

3.2 Further, the learned counsel submitted that, once the revision petitioner denies that the third defendant, Mr.R.Iyyappan is not working in their Concern, it is for the respondent/decree holder to prove that the third



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defendant is working under the revision petitioner's Concern, viz., "Saravana Stores". Furthermore, the garnishee order was passed only against the Proprietor, Mr.Pondurai of Proprietor of Saravana Stores, which is different entity. Under these circumstances, the Court below has wrongly sent notice to New Saravana Stores (Bramandamai) and the revision petitioner contends that, the Court below passed Garnishee order, misconstruing that both concerns are one and the same, when the fact remains that both are different entities, and therefore, the garnishee order cannot be executable and hence, it is liable to set aside and accordingly, the order of the Court below is liable to be quashed.

4. This Revision Petition was filed during 2015 and the notice was also served. In spite of the notice, none appeared on behalf of the respondent and hence, the name of the respondent was printed in the cause list.

5. Heard the learned counsel for the revision petitioner and perused the entire materials available on record.



6. The only point arises for consideration is, 'Whether, the Proprietor of "New Saravana Stores (Bramandamai)" and the Proprietor of "New Saravana Stores" situated at No.129, Usman Road, Opp: Panagal Park are one and the same'?

7. In the Execution Petition, Garnishee order was passed as against the Proprietor of "New Saravana Stores", however, inadvertently, the notice was sent to New Saravana Stores (Bramandamai) under the assumption that both concerns are one and the same. It is the duty of the respondent/deGREE holder to provide the correct address obviously.

7.1 From a perusal of the records and upon hearing the learned counsel for the revision petitioner, it is clear that the proprietary concern of the revision petitioner and the proprietary concern mentioned in the EP.No.990 of 2013 as against the 3rd judgment debtor's Garnishee namely, the proprietor of New Saravana Stores (Bramandamai) is not one and the same. There was a mistake crept in, at the time of service of the notice and thereby, they wrongly served the notice to the revision petitioner's concern.



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7.2. Once the revision petitioner took the stand that the 3rd judgment debtor is not working in its concern, the burden is shifted on the respondent/decreed holder to prove that the 3rd judgment debtor, namely, Mr.R.Iyyappan is working in the revision petitioner concern. But the Court below shifted the burden on the revision petitioner to prove that third judgment debtor is not working in their concern. If at all, the third judgment debtor was not working in the revision petitioner concern, it is not necessary for the revision petitioner to prove that the alleged person, Mr. R.Iyyappan is working in their concern.

7.3 Obviously, in Chennai, there are number of Stores, run under the name and style "Saravana Stores", that too, all are either by the proprietor concern or in the name of the partnership or in the name of the company and therefore, there is every likelihood of arising confusion in the matter of serving the notice. Therefore, the respondent should have clearly mentioned the correct particulars as regards the working place of the 3rd judgment debtor in order to serve the notice to the Garnishee of the 3rd judgment debtor. Here, the particulars regarding the working place of the 3rd



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judgment debtor were not clearly given by the respondent/deGREE holder, and it appears that there was confusion among two concerns, which had same name and style with prefix and suffix difference. Though this fact was brought to the notice of the Court below, without ascertaining the correct details regarding the Garnishee of the 3rd judgment/debtor or without insisting upon the respondent/deGREE holder to furnish the correct details, the Court below has erroneously passed the impugned order, which cannot be sustained and the same is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the impugned order dated 15.10.2014 made in E.P.No.990 of 2013 in ARC No.1327 of 2004 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition closed.

06.10.2021

Index: Yes/No
Speaking/Non-speaking Order
jd/sd



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To
X Assistant Judge,
City Civil Court,
Chennai.



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Krishnan Ramasamy, J.,
jd/sd

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