

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 3RD DAY OF AUGUST 2021

THE MASTER

A.No.1245 of 2021
in
C.S. No.478 of 2007

M/s. Raj Paris Civil Constructions Ltd.,
represented by its Director,
Mr.R.Satchidanandam,
having office
at Old No.162-B, New No.30,
Greens Lane, Thousand Lights,
Chennai 600 006

...Applicant/Plaintiff

-VS-

1.Mohamed Ibrahim,
S/o.M.S.Alliyar Bai,
No.1/59, Perumal Koil Street
Poonamallee High Road,
Siva Boodam Village,
Vanagaram, Chennai 600 095

2.A.Mohamed Yunus,
S/o. M.S.Alliyar Bai,
No.1/59, Perumal Koil Street
Poonamallee High Road,
Siva Boodam Village,
Vanagaram, Chennai 600 095

3. M.S.Alliyar Bai,
S/o.Shaik Dawood Saheb,
No.1/59, Perumal Koil Street
Poonamallee High Road,
Siva Boodam Village,
Vanagaram, Chennai 600 095

4. Mohuzeug,
S/o.K.S.M.Abdul Khadar,
No.6, 6th Avenue Ashok Nagar,
Chennai 600 083

5. Khadar Meeran,
S/o. K.S.Meera Naina
No.3, Barado Street,
West Mambalam,
Chennai 600 033

..Applicants/Defendants

Application praying that this Hon'ble Court be pleased to order payment out of a sum of Rs.12,39,45,026.50/- from and out of the deposit amount namely Rs.24,49,11,983/- now available to the credit of the Civil Suit in C.S.No.478 of 2007 and direct the Registry / Office of this Hon'ble Court to issue cheque for a sum of Rs.12,39,45,026.50/- (Rupees Twelve Crores Thirty Nine Lakhs Forty Five Thousand Twenty Six and Fifty Paise) in favour of the Applicant/Plaintiff/Decree Holder, namely M/s.Rajparis Civil Constructions Ltd.,

This Application coming on this day before this Court for hearing the court made the following order:

This is the payment out application filed by the Applicant/Decree Holder to withdraw the money deposited in the credit of Civil Suit No.478/2007.

The Applicant/Decree Holder filed this suit against the Judgment Debtors/Defendants for recovery of money and obtained the decree on 25.08.2014. Before obtaining the decree, during the pendency of the suit, an application in A.No.3872 of 2007 was filed by the Applicant to issue of an order of attachment before Judgment against the 6th respondent/Garnishee from disbursing the compensation amount payable to the Defendants. In that application it was ordered prohibiting the Garnishee from disbursing the compensation amount to the Defendants/Judgment Debtors.

The Applicant/Decree Holder filed another application in A.No.963/18 praying for direction on the Garnishee to deposit the compensation amount in the credit of suit in C.S.No.478/2007 towards the satisfaction of the decree. A.No.963/18 was listed before Hon'ble Judge and Hon'ble Judge directed the application to be placed before the learned Master since it was in the nature of the execution application. The Hon'ble Master allowed the application and directed the Garnishee to deposit the amount in the credit of C.S.No.478/2007. The Garnishee on 29.10.2020 deposited compensation amount into this Hon'ble Court to the credit of C.S.No.478/2007. Now, the applicant has come forward with this payment

out application to withdraw the decretal amount.

Admittedly, the suit was decreed on 25.11.2014 for an amount of Rs.8,54,23,044.50/- to be paid within 3 months. The Judgment Debtors failed to pay the amount within this stipulated time. This Applicant/Decree Holder did not file any execution petition to execute the decree. Instead of that he filed application against the Garnishee to deposit the amount and accordingly the amount was deposited. In view of this court, the procedure adopted by the Applicant seems to be not correct.

Whenever any decree is passed by any court, it has to be executed by way of filing execution petition only. Without resorting to the procedure of filing execution petition, the Decree Holder/Applicant has preferred an application against Garnishee to deposit the amount. There is no execution petition pending before this court. Further this applicant had already filed a similar payment out application in D.No.91830/2020 before Hon'ble Judge. On 23.02.2021, Hon'ble Judge passed an order that "this application is not maintainable. The remedy available to the applicant is only to file an execution proceedings. The Registry is directed to return the papers to the learned counsel for the Applicant". Accordingly, the papers were returned.

Suppressing the same, this applicant has again come forward with this application. The Applicant has suppressed the material fact that the earlier application was ordered to be returned as not maintainable. In fine, this court reiterates the order of the Hon'ble Judge that this application is not maintainable, since no execution petition is pending. Hence, the application is dismissed.

Sd/-MASTER
03/08/2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

JJ 05/08/2021