

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.3528 of 2016

and

CMP.No.17921 of 2016

1.K.J.Manickam

2.M.Rajeshwari

... Petitioners/Respondents

Vs.

M/s. Shriram Chits Tamil Nadu Private Limited,

Rep. by its foreman M.Prabhukumar

114-C, Cherry Road,

Salem – 1.

... Respondent/Petitioner

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, challenge the fair and decretal order passed in R.E.P.No.61 of 2012 in A.O.P.No.19 of 2011 dated 08.09.2016 on the file of the learned Additional District & Sessions Judge, Salem.

For Petitioners : Mr.N.Umapathi

For Respondent : No appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the order of arrest passed in R.E.P.No.61 of 2012 in A.O.P.No.19 of 2011 dated 08.09.2016 on the file of the learned Additional District & Sessions Judge, Salem.

2. On hearing the submissions made by the learned counsel for the petitioners that the order for arrest has been passed against the petitioners without complying the essential conditions for arrest, this petition is admitted for hearing. Despite notice served on the respondent and his name was printed in the cause list, there is no appearance for the respondent.

3. The learned counsel for the petitioner submitted that the petitioners who are the judgment debtors had owed money to the respondent /plaintiff, which is a chit company. The Execution Petition in which the impugned order of arrest has been ordered is connected to a decree for recovery of money.

4. It is seen from the records that when the said EP was pending, another EP in REP.No. 433/2015 was filed before the same Court for the same subject matter. The subsequent EP has been filed for attaching the property belonging to the petitioners and bringing it for sale.

5. When the earlier EP is pending, the subsequent EP ought to have been filed only by not pressing the earlier one. The court also omitted to take notice of the earlier EP and the subsequent EP has also been taken on file. But what appears from the second EP is that there are some properties available and the decree amount can be realized by bringing the said property for sale. When such an

option is available, it is not necessary to issue an order of arrest by the Executing Court.

6. It is submitted by the learned counsel for the petitioners that they are willing to deposit the title deeds in Court if their property is ordered to be brought for court auction. Under such circumstances, there is no need for any order for arrest. Hence I feel that order of arrest passed by the learned executing Court is liable to be set-aside.

In the result the present Civil Revision Petition is **allowed** and the impugned order dated 08.09.2016 passed in R.E.P.No.61 of 2012 in A.O.P.No.19 of 2011 by the learned Additional District & Sessions Judge, Salem, is hereby set-aside. No costs. Consequently, connected Civil Miscellaneous Petition in CMP.No.17921 of 2016, is also closed.

सत्यमेव जयते

22.06.2021

Speaking/Non-speaking

Index : Yes/No Internet : Yes/No

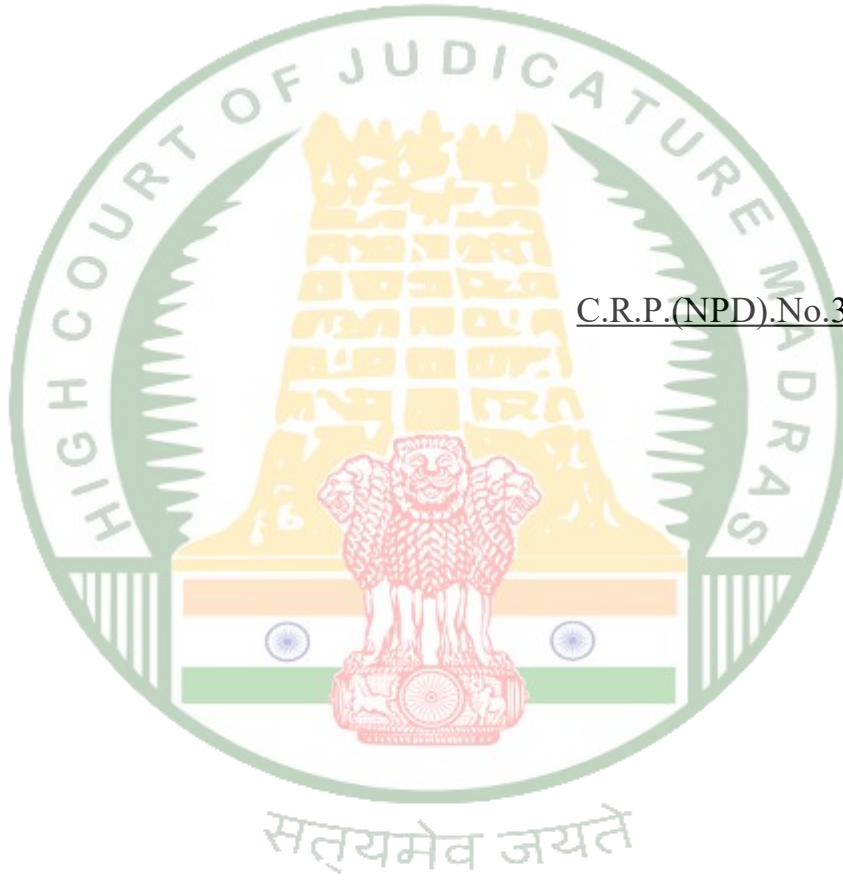
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To

1.The Additional District & Sessions Judge,
Salem.

R.N.MANJULA,J.

jrs



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