

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF AUGUST 2021

THE MASTER

E.P.28 of 2020

R.W.H.Ghyaz Ahmed
Advocate Commissioner

..Petitioner/Decree Holder

/Versus/

1.Dr.Lakshmanan Saravanan
2.Dr.S.Mahalakshmi

..Respondents/Judgment
Debtors/Plaintiffs

Execution Petition in Diary praying that this Hon'ble Court be pleased to Issue Warrant of Arrest on the 1st Judgment Debtor/Respondent/Plaintiff at Plot No.22/2, Abijay Hospital, Paper Mills Road, Peravallur, Chennai-11, Plot No.22/1, Door No.284 (Old No.206) (2/3rd share) Plaintiff Property in C.S.No.1 of 2014, High Court Madras-104, Peravallur, Chennai-11 Residing at No.4, Temple Road, First Cross, Jawahar Nagar, Chennai-600 082, under Order 39, Rules 51 & 52 of Madras High Court Original Side Rules, 1956 r/w O.21, Rule 38 of C.P.C. R/w Section 151 of C.P.C.

This Execution Petition coming on this day before this court for hearing, the court made the following order:-

This is the execution petition filed by the Advocate Commissioner against the Respondent/Plaintiff for recovery of remuneration along with cost.

The petitioner in this execution petition is the Advocate Commissioner appointed in this suit who is a learned Advocate. The Respondents in this execution petition are the Doctors. Both the parties are highly educated and professionals. Both have entered into this dispute which in view of this court is needless one according to their reputation and dignity of their profession.

The story behind this petition is that the respondents are the parties to the suit which is one for the partition. This petitioner was appointed as Court commissioner to divide the property by metes and bounds. The Commissioner with the help of an engineer filed his report. The report of the Commissioner was contrary to the Engineer's report. The report submitted by the Commissioner was not accepted by these respondents. Hence, they filed application to scrap the report of the Commissioner and prayed to appoint a new commissioner in this suit and it was accordingly ordered.

The Hon'ble Judge while appointing new Commissioner, for the service already done by this Petitioner/Commissioner ordered the respondents to pay additional remuneration of Rs.75,000/- to this Petitioner. Aggrieved by the same, the Petitioner preferred O.S.A. No.205 of 2020 before the Hon'ble division bench and it was closed with direction to directing the respondents to move before the Hon'ble Lordship Single Judge who passed the order awarding additional remuneration. Meanwhile, controversy arose between the Commissioner and the respondents. It seems that they exchanged words. Since the respondents did not pay the additional remuneration and went for O.S.A, the petitioner/commissioner has come forward with this execution petition.

During the pendency of this execution application, the respondents on the advice of others, wanted to settle the matter and paid Rs.75,000/- additional remuneration as ordered by the Hon'ble Lordship Single Judge to the Advocate commissioner/petitioner on 17.03.2021. But the petitioner after receiving the same filed a part satisfaction memo for the amount of Rs.75,000/- that he received and now he is seeking for 1/4th of the additional remuneration as cost of this E.P. Hence, he

prayed that since the respondents defamed him, damages shall be awarded in the way of exemplary cost.

Now the point for determination is that whether the petitioner is entitled to 1/4th amount of remuneration as cost of this E.P.?

The learned counsel for the petitioner argued that he was the Advocate Commissioner appointed in the suit and he was awarded with remuneration of Rs.75,000/-, but the Respondents willfully evaded the payment of remuneration and dragged the matter. When he asked for the same to the respondents used filthy words which lowered his dignity and reputation. Hence, without any other option, he has come forward with this execution petition. Hence, the execution petition may be ordered as prayed for with exemplary costs.

The learned counsel for the Respondents/Judgment Debtors counsel argued that they were not satisfied with the report of the Commissioner. The Commissioner purposely and willfully did not agree with the opinion of the respondents and he did not consider the suggestions given by the respondents while preparing his report. Hence, the respondents filed application to scrap his report and to appoint a new Commissioner. While appointing a new Commissioner, the Hon'ble Judge ordered to pay additional remuneration to this petitioner. Since no satisfactory

service was rendered by the commissioner, the respondents were not inclined to pay the additional remuneration. Hence, they preferred O.S.A.No.205 of 2020. The O.S.A.No.205 of 2020 was disposed with direction to approach the Hon'ble Single Judge. They filed an application before Single Judge and the same is pending. The delay is due to pendency of the application only. Meanwhile, the Respondents wanted to settle the matter amicably. Hence, they paid the additional remuneration to the Commissioner. But the Commissioner has filed execution application for the purpose to harass and degrade the respondents. Hence, petition may be dismissed.

This execution application has been filed for the additional remuneration of Rs.75,000/- in the E.P. In addition to the remuneration amount of Rs.75,000/-, the Petitioner has asked for 1/4th of additional remuneration as the cost of the E.P. The Hon'ble Single Judge has ordered to pay the additional remuneration of Rs.75,000/- only for the Commissioner for the service done by him. This is only a remuneration for the service rendered by the Commissioner. This is not an amount belongs to the petitioner which is kept in the hands of the respondents. There is no contract between the petitioner and the respondents for the above said amount. Hence, the petitioner cannot ask for any subsequent interest or cost for the amount of remuneration that was awarded.

Further, the order was passed on 30.09.2020. Against this order, the respondents preferred O.S.A. No.205 of 2020. The Hon'ble Division bench disposed the O.S.A. No.205 of 2020 with liberty to the respondents to approach the Hon'ble Single Judge. The respondents have applied for the order copy. Even before getting the same, they filed application to modify the order on 27.11.2020 and the same is not yet numbered. Meanwhile, the newly appointed commissioner filed his report and preliminary decree was passed. After filing of modification application on 27.11.2020, the respondents on 17.03.2021 paid the remuneration amount to the Commissioner/Petitioner and he also received the same. The modification petition filed by the respondents are neither numbered nor returned.

The respondents being not satisfied with the report of the Commissioner filed the application to scrap the report of the commissioner and asked for new commissioner. They were not willing to pay the remuneration. Hence, they preferred O.S.A. against the order passed awarding remuneration. Because of the pendency of the proceedings before the court only, the respondents did not pay the remuneration.

Further there is no explanation stated by the petitioner how he has arrived for the decision asking 1/4th remuneration as cost of this E.P. The petitioner has added 1/4th of the remuneration as E.P. cost according to his whims and fancies

which is not acceptable. Hence, this court is of the opinion that the petitioner is not entitled to 1/4th amount of remuneration as cost of this E.P. and answered accordingly to this point.

Since already the remuneration amount of Rs.75,000/- was paid by the respondents to the petitioner, in view of this court nothing survives in this E.P. to be further adjudicated. Hence, this E.P. is dismissed. There is no order to as to costs.

Sd./-MASTER

11/08/2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 09/01/2022