



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.1494 of 2020

and

C.M.P.No.7112 of 2021

M.Manokaran

... Petitioner/Plaintiff

Vs

1.Krishnaveni

2.Special Officer,
No.10, Sindamani, wholesale co-operative store,
Vadakovai,
Coimbatore.

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to direct the Learned Subordinate Judge, Udumalpet to number the Petition in E.P.Sr.No.1386 of 2019 in E.P.No.7 of 2018 in O.S.No.337 of 2015 by allowing this Civil Revision Petition.

For Petitioner : Mr.D.R.Arun Kumar.

For Respondents : Mr.L.P.Shanmugasundaram.

O R D E R

This Civil Revision Petition has been preferred against the order of the Learned Sub Judge, Udumalpet made in the form of return in E.P.Sr.No.1386 of 2019 in E.P.No.7 of 2018 in O.S.No.337 of 2015 dated 20.11.2019.

2.The Learned Counsel for the Petitioner submitted that the Petitioner filed a Suit against the First Respondent for recovery of money and the Suit was decreed on 05.12.2016. The Petitioner filed E.P.No.7 of 2018 for attaching the salary of the First Respondent for realizing the decreed amount. On 25.04.2019, the said Execution Petition was closed stating that "J.D and garnishee called absent. Process served. EP Closed."



3. Therefore, the Petitioner again filed Execution Petition in E.P.Sr.No.1386 of 2019 under Order 21 Rule 11(2) and 46B and Section 151 of Civil Procedure Code. However, this Petition was returned on 20.11.2019 stating that "attachment of salary was ordered in E.P.No.7 of 2018 and it was closed and the garnishee was served with the order of attachment of salary and when the garnishee has not taken any steps for complying with the order, Petition has to be filed for committing contempt of Court's order".

4. This return shows that already an order of attachment of salary was ordered and the said order was communicated to the garnishee. However, the Learned Counsel for the Petitioner has not produced the particular order passed by the trial Court before this Court. On going through the return made on 20.11.2019, this Court takes that already an order of attachment was passed and garnishee was informed. Despite informing the order of Court for attaching the salary of the Judgment debtor, the garnishee failed to comply with the order of the Court. Therefore, the Court directed the Petitioner to file a Petition for committing contempt of Court's order.

5. Be that as it may, Order 21 Rule 46B mandates where a garnishee does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice and on such order, execution may issue as though such order were a decree against him.

6. In view of this distinct provision, the Petitioner is now given permission to move an appropriate application before the Learned Sub Judge, Udumalpet. On filing such application, the Learned Sub Judge, Udumalpet is directed to restore the E.P.No.7 of 2018 in O.S.No.337 of 2015 and proceed to dispose the same on merits and in accordance with law as early as possible.

7. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Udumalpet.

WEB COPY
Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.D.R.Arunkumar, Advocate Sr No.48455

C.R.P.No.1494 of 2020
and
C.M.P.No.7112 of 2021

AJS (CO)
PR (25/10/2021)