

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D) No. 1224 of 2021

Dhanalakshmi Srinivasan Chit Funds Pvt Ltd.,
Represented by its Foreman,
No.2, Veppansalai at Thirupulisamy Street,
Tindivanam -604001

...Petitioner

Vs.

1. S.Suresh
2. S.Malathi
3. D.Annai Rathinam

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 30.03.2021, passed by the learned Additional Subordinate Judge, Tindivanam, in E.P.No.62 of 2018.

For Petitioner : Mr.J.Sathiyamoorthy
For Respondents : No appearance

ORDER

This Civil Revision Petition is filed to set aside the order dated 30.03.2021, passed by the learned Additional Subordinate Judge, Tindivanam, in E.P.No.62 of 2018.

2. The learned counsel for the petitioner submitted that in an

arbitration proceedings, an award has been passed on 24.04.2017, against the respondents in D.R.A.No.163 of 2016 for a sum of Rs.2,95,784/-, directing the respondents to pay jointly and severally, the aforesaid sum with interest and costs. Accordingly, the petitioner filed E.P.No.62 of 2018 for attaching the salary of the third respondent for realizing the decree amount. The third respondent came before the Trial Court and filed counter, objecting to attach his salary. It is the contention of the third respondent that the respondents 1 and 2 were the persons who borrowed loan from the petitioner. The award has to be executed only against the respondents 1 and 2, and not against the third respondent.

3. On considering the rival submission, the learned Additional Subordinate Judge, Tindivanam, dismissed E.P.No.62 of 2018 in D.R.A.No.163 of 2016, on the reason that the petitioner ought to have filed the execution petition against the property of first respondent for attachment. When there is a specific mention in this regard in the award in D.R.A.No.163 of 2016, it is not proper to attach the salary of the third respondent. In this view of the matter, the learned Additional Subordinate Judge, Tindivanam, dismissed the E.P.No.62 of 2018 in D.R.A.No.163 of 2016 on 30.03.2021. Hence, this Civil

Revision Petition is preferred.

4. The learned counsel for the petitioner further submitted that the first respondent was a subscriber of a chit and he was a successful bidder. The respondents 2 and 3 are the guarantors for the due repayment of chit amount and the chit amount was not paid by the first respondent. Hence, arbitration proceedings were initiated and the award dated 24.04.2017 in D.R.A.No.163 of 2016 was passed. As per the award, the petitioner is entitled to proceed against the guarantors, from whom, he can recover the amount. Accordingly, the present execution petition in E.P.No.62 of 2018 was filed. The learned Additional Subordinate Judge, Tindivanam, dismissed the execution petition on the ground that the petitioner ought to have filed the E.P.No.62 of 2018 for attachment and sale of the property of respondent 1 and not to attach the salary of the third respondent.

5. This court by its order dated 20.07.2021, directed to send notice to the respondents and though notice was served on them, names of the respondents also printed in the cause list, no one appeared for the respondents. Since, the scope of the Civil Revision Petition is limited, this court proceeds to

dispose the petition.

6. It is seen from the award dated 24.04.2017 in D.R.A.No.163 of 2016, that it was passed against all the three respondents, directing them jointly and severally to pay a sum of Rs.2,95,784/-, with interest and costs. Alternatively, an option was given for bringing the property of the first respondent to sale in the award itself. The liability of guarantor is co-extensive with that of the principal debtor. Therefore, the dismissal of the execution petition on the reason that the petitioner should have proceeded against the first respondent's property and not against the third respondent is not based on the principles of law. The petitioner is entitled to proceed against respondents 1 to 3 either jointly or individually. Further, the petitioner has chosen to proceed against the 3rd respondent by attaching his salary for realizing the decree amount. This cannot be faulted and it is in accordance with law.

7. In this view of the matter, the order dated 30.03.2021, passed by the learned Additional Subordinate Judge, Tindivanam, in E.P.No.62 of 2018 in D.R.A.No.163 of 2016 is set aside, further, the learned Judge is directed to restore the E.P.No.62 of 2018 and issue notice to the respondents and dispose

of the E.P.No. 62 of 2018 on merits and in accordance with law. Accordingly,
this Civil Revision Petition is allowed. No costs.

ep/Jer

13.09.2021

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

To

1.The Additional Subordinate Judge,
Tindivanam.

2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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