

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(NPD) Nos.1757, 1758 and 1761 of 2021
and
C.M.P. Nos. 13593, 13596 and 13598 of 2021**

P. Ezhilarasan ...Petitioner in C.R.P.No.1757 of 2021

P. Ambikapathy ...Petitioner in C.R.P.No.1758 of 2021

G.Thamilarasan ...Petitioner in C.R.P.No.1761 of 2021

Vs.

1. K. Jeevagan
2. G. Thamilarasan
3. P. Ambikapathy ...Respondents in C.R.P.No.1757 of 2021

1. K. Jeevagan
2. P. Ezhilarasan
3. G. Thamilarasan ...Respondents in C.R.P.No.1758 of 2021

1. K. Jeevagan
2. P. Ezhilarasan
3. P. Ambikapathy ...Respondents in C.R.P.No.1761 of 2021

Common Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of attachment of salary of the

petitioner to an extent of Rs.5,87,567/- in monthly instalments of Rs.11,650/-, Rs.12,330/- and Rs.11,000/- passed by the Learned Additional Subordinate Judge, Kallakurichi in E.P.No.40 of 2018 in A.O.P.No.63 of 2008 dated 04.05.2021.

In all the C.R.P's.:

For Petitioners : Ms. AL.Ganthimathi

COMMON ORDER

These Civil Revision Petitions are filed seeking direction to set aside the order of attachment of salary of the petitioners to an extent of Rs.5,87,567/- in monthly instalments of Rs.11,650/-, Rs.12330/- and Rs.11,000/- respectively passed by the Learned Additional Subordinate Judge, Kallakurichi in E.P.No.40 of 2018 in A.O.P.No.63 of 2008 dated 04.05.2021.

2. The learned counsel for the petitioners submitted that the award in A.O.P.No.63 of 2008 was passed for Rs.1,62,250/- on 24.03.2009. However, E.P.No.40 of 2018 was filed only in 2018 claiming interest and costs to an extent of Rs.5,27,170/-.

3. Grievance of the learned counsel for the petitioners is that the pro orders issued by the Court states that a sum of Rs.5,87,567/- has to be recovered individually from the salary of the guarantors/petitioners in these C.R.P.'s. In that case, the total amount sought to be recovered from the salaries of the petitioners come to an extent of Rs.16,80,000/- . It amounts to excessive execution. Therefore, the learned counsel for the petitioners prayed for setting aside the orders of the learned Additional Subordinate Judge, Kallakurichi.

4. Considered the submissions of the learned counsel for the petitioners and perused the records.

5. Admittedly the award was passed in A.O.P.No.63 of 2008 against four persons for a sum of Rs.1,62,550/-. The execution petition is filed only against the guarantors and not against the principal debtors. Of course, the principal debtor is liable to pay the amount. When he fails to pay, the guarantors are liable to pay, as their liability to pay the amount is co-extensive with that of principal debtor. Once they paid the amount, they are entitled to claim the amount from the principal debtor. The perusal of

the execution petition shows that the respondents filed petition seeking attachments at the rate of Rs.11,650/- from the salary of the first respondent, Rs.12,330/- from the salary of the second respondent, Rs.11,000/- from the salary of third respondent in the execution petition. The pro orders reads that “The Court directed the Garnishee to recover the whole decree amount (i.e) Rs.5,87,567/- from the salary of each of these petitioners at the rates indicated above”. These pro orders are obviously wrong. The learned Additional Subordinate Judge, Kallakurichi, should have apportioned the amount among the petitioners equally and ordered attachment of salary of the appropriated amount and that has not been done.

6. Therefore, this court is inclined to set aside the orders dated 04.05.2021, in E.P.No. 40 of 2018 in A.O.P.No.63 of 2008, and accordingly set aside.

7. However, this court directs the learned Additional Subordinate Judge, Kallakurichi, to follow the Section 60 and Order 21 Rule 48 A of CPC in deciding these matters and pass revised orders of attachment after

apportioning the aforesaid decree amount among the petitioners.

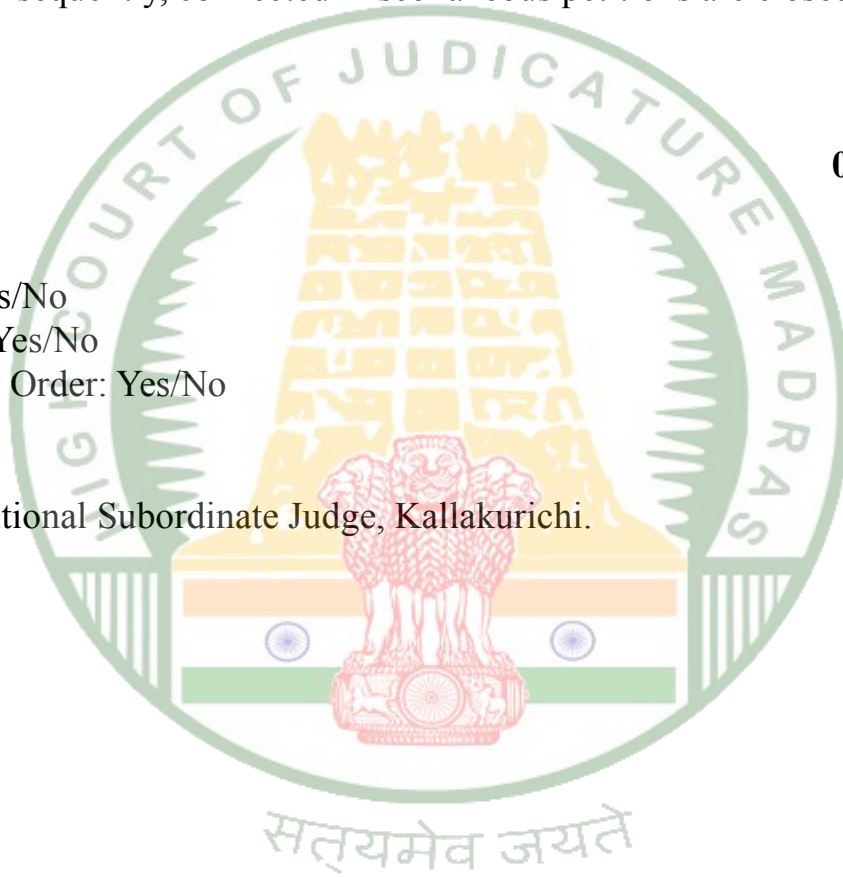
8. Accordingly, these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Ep/Jer

01.09.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The Additional Subordinate Judge, Kallakurichi.

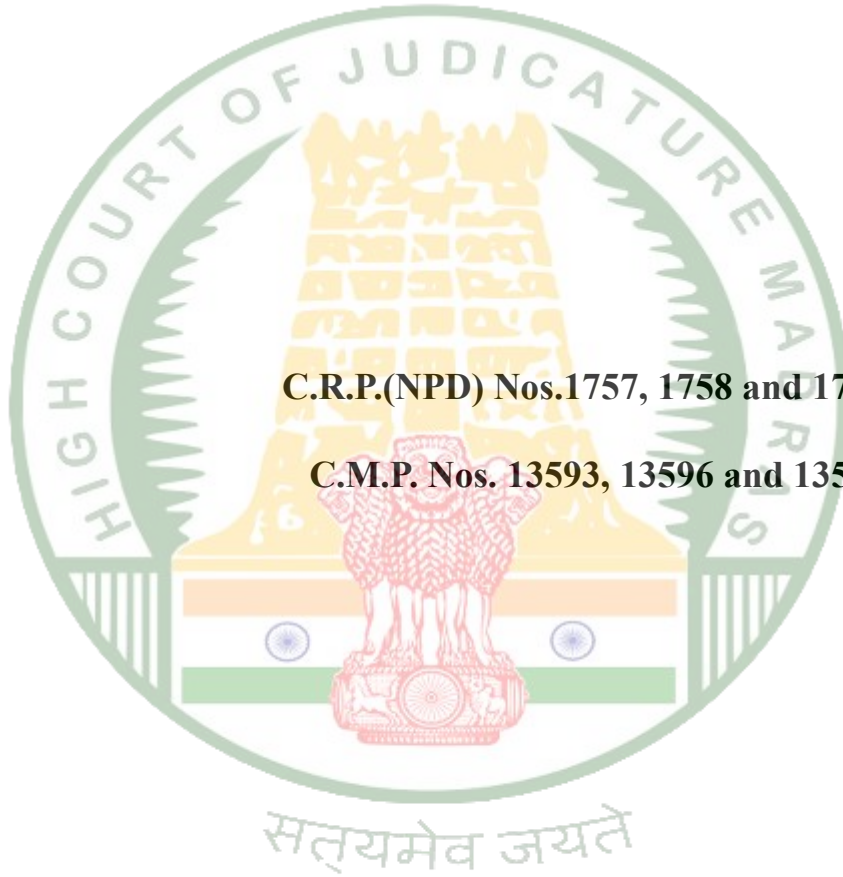


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G.CHANDRASEKHARAN.J,

ep/Jer



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