



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.174 of 2020

and

C.M.P.(MD).Nos.1015, 1585 and 1586 of 2020

S.Chelladurai Nadar

... Petitioner / Petitioner/
2nd respondent / 2nd respondent

Vs.

1.Sri Visalam Chit Fund Ltd.,
represented by its Branch Manager,
Tuticorin Branch,
No.47, Kanagasabapathi Street,
Tuticorin.

... 1st respondent/1st respondent/
Petitioner / Petitioner

2.C.Balasubramanian

... 2nd respondent / 2nd respondent/
1st respondent / 1st respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to number the E.A. Applications in unnumbered E.A.Nos.nil of 2019 in E.P.No.16 of 2008 in Chit O.P.No.1 of 2007 on the file of the Sub Court Tuticorin.

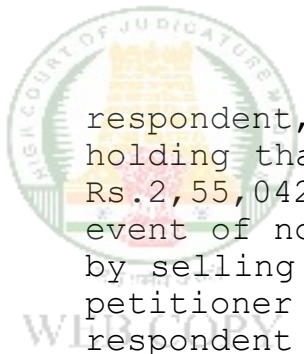
For petitioner : Mr.S.Siva Thilakar

For 1st respondent : Mr.T.R.Subramanian

ORDER

This Civil Revision Petition has been filed by the petitioner praying to direct the Court below to number the unnumbered E.A.Nos. nil of 2019 in E.P.No.16 of 2008 in Chit.O.P.No.1 of 2007.

2. The learned counsel appearing for the petitioner submitted that the second respondent is the son of the petitioner. The first respondent herein has filed Chit.O.P.No.1 of 2007 against the petitioner and the second respondent, for non repayment of chit amount. In view of non appearance of the petitioner and the second

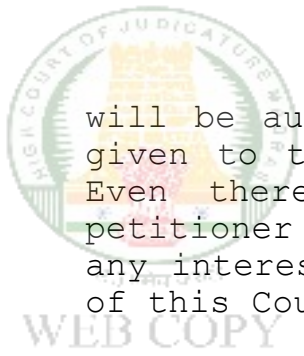


respondent, an *ex parte* award was passed in the Chit Petition holding that the petitioner and the 2nd respondent are liable to pay Rs.2,55,042/- with interest to the 1st respondent and that in the event of non payment of the amount, the said amount can be recovered by selling the property which was pledged by the petitioner. As the petitioner and 2nd respondent did not pay the amount, the first respondent herein has filed an execution petition in E.P.No.16 of 2008. The petitioner and the 2nd respondent filed counter affidavit in the execution petition and requested to keep the execution proceedings pending till the unnumbered Civil Revision Petition which was presented against the *ex parte* award, decided by this Court. But, even before the said revision petition was numbered, the Court below passed an *ex parte* order in the execution petition and thereby, allowed the execution petition filed by the first respondent herein and permitted to recover the amount by selling the property.

3. The learned counsel for the petitioner further submitted that the first respondent, in collusion with the third parties, is attempting to bring the property for sale for a lesser amount by abusing the process of law. Hence, the petitioner presented an application for condonation of delay in filing a petition to set aside the *ex parte* order dated 13.04.2018 and to set aside said *ex parte* order. But, the Court below has returned the said applications raising objection as to how the petition is maintainable. Though the petitioner has represented the said applications with explanations twice, again the Court below returned the said applications raising the same objection, ie., as to how the petition is maintainable. Hence, the petitioner has come up with this petition for the aforesaid prayer.

4. The learned counsel for the petitioner mainly contended that the Court below ought to have numbered the delay application, especially when the petitioner is ready to settle the amount payable to the first respondent and that it is not proper on the part of the Court below in returning the applications based on assumption and presumption without considering the explanations given by the petitioner. Thus, he prayed to allow this petition.

5. The learned counsel appearing for the first respondent submitted that the petitioner has been dragging on the matter purposefully. Though the petitioner and 2nd respondent filed counter affidavit in the year 2011 to the execution petition, they did not evince any interest to repay the amount till the *ex parte* order dated 02.02.2016 passed in the execution petition. He would further submit that considering the delaying tactics of the petitioner and also considering the submission of the petitioner that he is ready to settle the matter, this Court granted only limited period of interim stay in this revision and made it clear that if the revision petitioner has not settled the matter, this Civil Revision Petition



will be automatically dismissed and no further opportunity will be given to the revision petitioner to contest the matter on merits. Even thereafter, this Court gave several opportunities to the petitioner to settle the matter. But, the petitioner did not evince any interest in settling the matter and show disregard to the order of this Court. Thus, he prayed to dismiss this revision petition.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. It is seen that the execution petition has been filed by the first respondent in the year 2008 and, the petitioner and the 2nd respondent have filed their counter affidavit on 27.09.2011 stating that they have presented a Civil Revision Petition questioning the *ex parte* award passed in the Chit Petition. But, till 02.02.2016, the petitioner did not take any steps to get the revision petition numbered and obtain any interim order and therefore, the Court below, by order dated 02.02.2016, has allowed the execution petition. Thereafter also, the petitioner kept silent for years together. Only on 29.03.2019, the petitioner stated to have presented the petitions to condone the delay in filing a petition to set aside the *ex parte* order dated 13.04.2018 and to set aside the *ex parte* order dated 13.04.2018. Curiously, the petitioner did not even state anywhere in which petition such order was passed and he did not even enclose the copy of the order dated 13.04.2018 in the typed set of papers.

8. Considering the lethargic attitude and delaying tactics of the petitioner and also considering the submission of the learned counsel for the petitioner that the petitioner is ready to settle the matter, this Court has granted limited stay of the execution proceedings ie., till 13.02.2020, making it clear that if the revision petitioner has not settled the matter, this revision petition will be automatically dismissed and no further opportunity will be given to the revision petitioner to contest the matter on merits. Even thereafter, the petitioner did not show any interest to settle the matter. However, he has filed interim applications only for extension of stay order and modification of the stay order granted by this Court. Then, the petitioner dragged the matter till today under the guise of settlement. But, the fact remains that he did not make any settlement till date. Even though the petitioner contended that there is a dispute only with regard to interest portion, he could have deposited or paid the chit amount to the first respondent, in order to show his *bona fide*, but, he did not do so. Mercy cannot be shown to the petitioner on the ground of age factor, because his son is also sailing along with him in this case.

9. Viewing from any angle, it shows that the petitioner has filed this petition only to drag on the matter and accordingly, dragged the matter. It is nothing but abuse of process of Court. In



view of the above and also considering the attitude of the petitioner, this Court is inclined to dismiss this revision petition with heavy cost, however, considering the request of the petitioner, the cost is not imposed.

10. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge,
Tuticorin.

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-11253[F] dated 16/03/2021)

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-11381[F] dated 16/03/2021)

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