



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.571 of 2021
and CMP(MD).No.3084 of 2021

Margadarsi Chits (P) Ltd.,
Rep by its Foreman,
Door No.19, A.A.Road,
Gnanavolivupuram,
Madurai - 16.

... Petitioner/Petitioner/
Petitioner/Plaintiff

[Cause title accepted vide
Court order dated 10.03.2021]

-Vs-

P.Suryanathan

...Respondent/Respondent/
2nd Respondent/5th Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 21.09.2020 ordering notice to the respondent in E.A.No.97 of 2020 in E.P.No.244 of 2017 in C.D.No.50 of 2016 on the file of the District Munsif Court, Madurai Town, consequently, direct the Court below issue a cheque in favour of the petitioner by allowing the above civil revision petition.

For Petitioners : Mr.R.Devaraj

O R D E R

This Civil Revision Petition has been filed by the petitioner challenging the docket order dated 21.09.2020 passed in E.A.No.97 of 2020 in E.P.No.244 of 2017 in C.D.No.50 of 2016, on the file of the District Munsif Court, Madurai Town.

2. The revision petitioner has filed the Original Chit Dispute proceedings against the respondent-5th defendant along with four others in C.D.No.50 of 2016 on the file of the Deputy Registrar of Chits, Madurai South for the relief of recovery of balance chit amount along with interest at the rate of 24%. The Deputy Registrar, Madurai South passed an award dated 15.11.2016, for an



amount of Rs.49,001/- with interest at the rate of 24% from the date of filing of petition. the suit in O.S.No.37 of 2017 for declaration and permanent injunction against the respondents herein. Since the said amount has not been paid by the defendants/Judgment Debtors, the revision petitioner has filed E.P.No.244 of 2017 for attaching the salary of the 2nd defendant/2nd Judgment Debtor and the respondent herein. While so, the 2nd defendant/2nd Judgment Debtor died and the revision petitioner proceeded the execution proceedings against the respondent. The said execution petition was transferred to the Principal District Munsif, Madurai Town. The respondent did not appear in execution proceedings and he was set exparte. Consequently, an order of attachment was passed on 09.04.2018 for attaching a sum of Rs.2,949/- per month and the same was deposited to the credit of E.P.No.244 of 2017.

3. It is further submitted that the petitioner-decree holder has filed an application in E.A.No.97 of 2020 in E.P.No.244 of 2017 before the Court below to issue cheque in favour of the petitioner for deposited amount in E.P.No.244 of 2017 towards the part satisfaction of the decree amount. The Court below after verifying the records had posted the said application for orders on 21.09.2020 and again on 21.09.2020, the Court below ordered notice to the respondent returnable by 04.11.2020. Challenging the same, the petitioners have filed this revision petition.

4. Heard the learned Counsel for the petitioner and perused the materials placed before this Court.

5. Admittedly, the respondent did not appear in the execution proceedings and set exparte and an order of attachment was passed on 09.04.2018 for attaching a sum of Rs.2,949/- per month from the salary of the respondent and the same was deposited to the credit of E.P.No.244 of 2017. The learned counsel for the petitioner would state that the respondent has not questioned the order of attachment of salary and the amount has already been accumulated in the suit proceedings. Therefore, in my opinion, the learned Judge ought to have seen whether the petitioner is entitled to receive the amount or not? and the learned Judge once again ought not to have issued notice to the respondent who was already set exparte in the execution proceedings. Accordingly, the docket order issuing notice to the respondent is set aside and the learned Judge shall look into the matter as to whether the petitioner is entitled to withdraw the amount in Court deposit or not and pass orders within a period of two weeks from the date of receipt of a copy of this order.



6. Accordingly, the present Civil Revision Petition stands disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

To

1. District Munsif Court,
Madurai Town.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai(2 COPIES).

3. The Registrar (Judicial),
Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-14027[F] dated 26/03/2021)

C.R.P. (MD) No.571 of 2021
26.03.2021

KUN(CO)

TR(22.04.2021) 3P 6C