



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1234 of 2021

and

C.M.P. (MD) No.7065 of 2021

Anaglit Ammal ... Petitioner/Petitioner/Respondent/Defendant

vs.

The Tamil Nadu Electricity Board,
represented by its Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin. ... Respondent/Respondent/Petitioner/Plaintiff

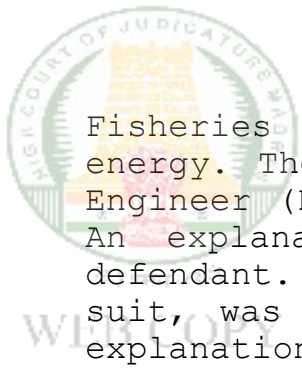
PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to direct the 1st Additional District Judge, Thoothukudi to take on file and number the application in unnumbered E.A.No..... of 2021 in E.P.No.45 of 2014 in O.S.No.13 of 2007 on the file of the 1st Additional District Judge, Thoothukudi and to decide the same on merits in accordance with law within a time frame fixed by this Court.

For Petitioner : Mr.Selva Aditya for
Mr.G.Prabhu Rajadurai
For Respondent : Mr/s.Rajeswari for
Mr.S.M.S.Johnny Basha

ORDER

This Civil Revision Petition clearly demonstrates the loopholes of the law in the legal system, which an unscrupulous litigant takes advantage of to protract the proceedings. The 2nd defendant is the revision petitioner before this Court.

2.The 1st respondent herein/Electricity Board had filed a suit in O.S.No.13 of 2007 on the file of the learned 1st Additional District Judge, Thoothukudi for recovery of a sum of Rs.46,89,224/- with interest that was due from the petitioner's towards penalty on account of the tampering of security seals in a meter as the petitioner herein was found guilty of theft of energy to her Ice plant, which she had taken on lease from the 1st respondent Corporation. As soon as the theft of energy was deducted, the Board had registered a criminal case against the defendants and a show cause notice was issued to the 1st defendant, namely, the Tamil Nadu

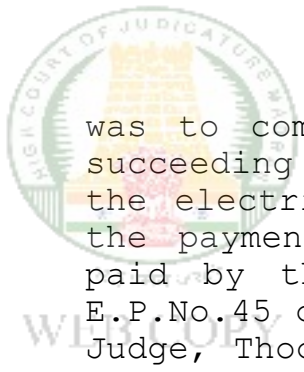


Fisheries Development Corporation informing about the theft of energy. The 1st defendant was asked to appear before the Executive Engineer (Distribution) and submit their explanation on 17.08.2001. An explanation dated 10.08.2001 was also forwarded by the 1st defendant. The petitioner herein, who is the 2nd defendant in the suit, was sent 2nd show cause notice on 10.09.2001, to which, an explanation dated 27.09.2001 was given. Not being satisfied with the said explanation and since the petitioner had not sought for any enquiry, assessment order was passed on 28.09.2001 as per the rules.

3.The petitioner herein had filed W.P.(MD) No.19848 of 2001 before this Court, challenging the said order. By order dated 18.10.2011, the plaintiff was directed to conduct a fresh enquiry, after issuing due notice. The petitioner had appeared for enquiry through her Deputy Manager and orders thereafter were passed on 29.12.2001. Since the petitioner had not given a satisfactory explanation for the availability of 4 nos bogus seals on the meter found in the premises, she was found guilty of theft of energy. The value of the theft of energy committed was assessed at Rs.46,89,224/- and an assessment notice dated 29.12.2001 was sent to the petitioner. The petitioner was also given a concession to pay the said amount in 15 equal monthly installments.

4.This order was challenged by the 1st defendant and not by the petitioner herein by filing W.P.No.135 of 2002. The petitioner however filed an appeal. On 16.01.2002, this Court had passed an order directing the Board to take on file the appeal filed by the petitioner subject to the condition that the petitioner shall deposit a sum of Rs.5,00,000/- to the appropriate authority within 4 weeks. This was challenged by the petitioner in W.A.(MD) No.195 of 2002 and she had obtained an interim order of stay dated 29.12.2002. Ultimately, the writ appeal was dismissed on 04.11.2004. Thereafter, a notice was sent calling for payment. However, the petitioner herein was evading the payment. In the written statement, the petitioner had taken the plea of limitation.

5.The learned 1st Additional District Judge, Thoothukudi, had framed issues and trial had also commenced. Two witnesses had been examined on the plaintiff's side through whom Exs.A1 to A8 were marking. The 1st defendant had examined D.W1 and marked Exs.B1 to B7. At this juncture, on 25.02.2011, the plaintiff had filed a memo enclosing the copy of the order in W.A.(MD) No.594 of 2008 dated 20.12.2010 stating that the matter had been settled in a Lok Adalat on 05.01.2006 in and by which the petitioner herein was directed to pay a sum of Rs.35,00,000/-. The petitioner had agreed to pay a sum of Rs.2,50,000/- within a week and the balance was to be paid in 82 monthly installments. It appears that the petitioner had also paid a sum of Rs.2,50,000/- on 27.01.2011. The suit was therefore decreed, directing the petitioner herein to pay a sum of Rs.32,50,000/- and Rs.10,000/- towards 82 monthly installments. The monthly installment



was to commence from February, 2011 payable on the 15th of every succeeding English Calendar month. The Board was directed to restore the electricity connection. However, the petitioner failed to make the payment. After paying 29 installments, no further amount was paid by the petitioner. Therefore, the 1st respondent had filed E.P.No.45 of 2014 on the file of the learned 1st Additional District Judge, Thoothukudi for recovery of the said amount by attaching the property of the plaintiff. The Executing Court was pleased to order of attachment of the property and the property has also been brought to sale. At this juncture, the petitioner has come forward with this petition in E.A.SR.No.1217 of 2021 seeking permission of the Court to permit her to make a down payment of Rs.5,00,000/- and to repay the decree amount in monthly installments of Rs.10,000/-.

6.The learned 1st Additional District Judge, Thoothukudi had rightly returned the application seeking an explanation as to how the petition was maintainable especially when the Execution Petition was posted for sale. In response to the said return, the papers have been represented with the following explanation:-

"Even if it is posted for sale, this Hon'ble Court has power to adjourn the sale as per the provision of Order 21 Rule 69 CPC. Therefore, till the decree is satisfied, this Court is having every authority/power to pass suitable orders in furtherance of law to meet the ends of justice. As the IA is aged lady as she has no avocation she is not in a position to pay the entire due amount is one go. Therefore, she needs installments. Therefore, in the interest of justice, this Hon'ble Court can grant installments for payment of the decree amount. Therefore, to involve the same, this petition is filed. Hence, sly sheet attached, re-presented."

7.Once again the papers were returned and the petitioner has represented the same stating that the Court could adjourn the case even if the Execution Petition is posted for sale. It is needless to state that an Executing Court is bound by the decree and has to execute the same. The Executing Court cannot modify or rewrite the decree. The petitioner has been given sufficient time to make the payment, which however she has not complied with. The petition filed by her is also alien to an execution proceedings. If the petition is allowed, it would amount to modifying the original decree. The learned Judge has rightly rejected the petition even at the inception without numbering the same. The learned counsel has no doubt requested that the petition be numbered and notice be issued to the respondent. Once the Court is convinced that the application itself is a frivolous one, there is no necessity to prolong the execution of the decree. It is needless to state that the Court should not entertain frivolous petitions and add to the judicial backlog. The decree holder is the Electricity Board, they have been waiting to recover its dues, which is the penalty for the theft of



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energy. The suit was filed as early as in the year 2007 and the plaintiff is yet to reap the fruits of the decree.

8. In these circumstances, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The 1st Additional District Judge,
Thoothukudi.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-34821[F] dated
17/11/2021)

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TSK(CO)

KB(24.12.2021) 4P 3C