BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2021
CORAM :
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP(MD).No. 633 of 2014 and
M.P(MD).No.1 of 2014

The Divisional Railway Manager / works,
Southern Railway,
Trichy. .. Petitioner / Respondent / Respondent

Vs.

S. Vijayaraghavan ... Respondent / Petitioner / Claimant

Prayer: Civil Revision Petition filed under Section 115 Cr.P.C., against the order in E.P.No.403 of 2012 in Ar.O.P.No.2011 of 2009, dated 21.10.2013, on the file of the III Additional District Judge, Trichy.

For petitioner : Mr.S. Manohar

For Respondent : Mr.Prabhakar for
Mr. D. Rajkumar

ORDER

This revision is filed challenging the order of the executing Court made in E.P.No. 403 of 2012 directing the attachment of the properties mentioned in the schedule to the Execution Petition. Execution was levied, seeking attachment of movables, since the petitioner had failed to pay the award amount.

2. It is seen from the records that an award was passed in favour of the respondent herein for a total sum of Rs. 5,92,200/- along with interest and costs. The decree holder sought for execution of the said award. A calculation memo was also filed stating that the entire amount due under the award, except a sum of Rs.64,239/- has been paid by the revision petitioner herein. This calculation memo was filed by the decree holder in the execution proceedings. It is the contention of the Railways that a sum of Rs.66,328/- has been adjusted towards the income tax paid in advance, since the Railway Board had required the petitioner herein to deduct the tax on the amount paid pursuant to the award made in the arbitration proceedings. The executing Court, however without adverting to the calculation memo, concluded that the petitioner has not paid any amount in satisfaction of the award and directed the attachment of the movables.

3. I have heard Mr. S. Manohar, learned counsel appearing for the petitioner / Railways and Mr. Prabhakar, learned counsel appearing for the respondent / decree holder.

4. Mr. S.Manohar, learned counsel appearing for the revision petitioner would vehemently contend that the Railways within its rights in deducting the tax at source on the moneys paid under the award. He also referred to the circular of the Railway Board dated 21.01.2014 in support of his contention.

5. The learned counsel for the respondent would however invite my attention to the Judgment of the Delhi High Court made in Ex.P.75/2015 & EX. APPL. (OS) Nos. 1216 - 17 / 2015, dated 31.07.2019, wherein the Delhi High Court after referring to the Judgments of the Supreme Court in ***All India Reporter V. Ramachandra D. Datar,*** reported in ***1961 (2) SCR 773*** and ***American Home Products Corporation Vs. MAC Laboratoreis Pvt.Ltd., and Anr,*** reported in ***1986 (1) SCC 465 and other*** decisions of the Bombay High Court Hon'ble Justice Rajiv Shakder has concluded as follows:

> *"17. As correctly argued by Mr.Banerji, this aspect of the matter need not detain me in view of what is stated hereinabove by me as regards Article 22(3) of the DTAA. I may, however, notice that these Judgments do enunciate the principle, which is, that once a claim merges into a decree of the Court it transcends into a judgment - debt and, therefore, only those adjustments and deductions can be made which are permissible under the Code of Civil Procedure, 1908. The Judgments encapsulate the theme that a decree should be executed according to its tenor unless modified by a statute such as the 1962 Act."*

6. No doubt, as per the above pronouncement of the Delhi High Court once the decree is passed the Judgment debtor cannot claim to deduct tax at source on the decree amount. It is for the Judgment debtor to pay the amount awarded or decreed as per the decree and the deductions can be made only of such amounts as provided under the Code of Civil Procedure, 1908. The Code of Civil Procedure, 1908 does not contemplate the deduction of the tax on source. Hence, the claim of the petitioner that a sum of Rs.66,328/- has been paid towards income tax cannot be accepted.

7. At the same time, the order of the Executing Court directing the attachment cannot also be sustained. The learned Executing Court had not adverted to the calculation memo filed by the decree holder evidencing the payment of a major portion of the decree amount.

8. Therefore, this Civil Revision Petition is disposed of with a direction to the petitioner to pay a sum of Rs.64,239/- claimed as per the calculation memo filed by the decree-holder before the executing Court within a period of eight weeks from today, failing which the order of attachment passed by the Executing Court could be implemented by the decree holder. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The III Additional District Judge, Trichy.

Copy to
The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.D.RAJ KUMAR, Advocate (SR-7365[F] dated 25/02/2021)
+1 CC to M/s.S.MANOHAR, Advocate (SR-7727[F] dated 01/03/2021)

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TP(CO)
TR(18.03.2021) 3P 6C