



C.R.P. (NPD) No.192 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.06.2022

Delivered on : 14.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.192 of 2020

and

CMP No.1052 of 2020

Margadarsi Chit Private Limited,
Represented by its Foreman
P.Chandra Babu,
19, AA Road, Gnanaolivupuram,
Madurai – 625 016.

... Petitioner

Vs.

1. M/s.Tiles Visions,
Rep. by its Proprietor
Mr.P.Manimaran
2. Mr.P.Paul Pandian,
Proprietor, M/s.Pandian Earth Movers
3. M.Kannan,
Proprietor, M/s. Sastha Marbles
4. V.S.Gour Mohandoss,
Proprietor, M/s.Garupad Garments
5. Vadivel Murugan

... Respondents

(The respondents 1 & 5 have remained ex-parte before the Executing Court. The respondents 2 & 4 were exonerated before the Executing Court. Hence, Notice is dispensed with for the respondents 1, 2, 4 and 5 in this revision)



C.R.P. (NPD) No.192 of 2020

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order, dated 24.09.2019 in E.P. No.117 of 2018 on the file of the Principal District Court, Tirupur in A.R.C. No. 51 of 2016 on the file of Deputy Registrar of Chits, Madurai (South).

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.K.S.Kaviarasu for R3
R1, R2, R4 and R5 set exparte

ORDER

This Civil Revision Petition is filed by the petitioner, who is the Decree Holder in ARC No.51 of 2016 on the file of the Deputy Registrar of Chits, Madurai (South). The Revision Petitioner has filed the aforesaid ARC No.51 of 2016 for recovery of a sum of Rs.13,50,841/- together with interest at 24 % per annum till realization.

2. In the Arbitration case, notice was issued to the respondents therein. The learned Deputy Registrar of Chits upon arriving at a satisfaction that the respondents failed to pay Chit amount, has passed an award on 19.01.2017 directing the respondents therein to jointly and severally pay the amount as claimed in the petition. To Execute the decree passed by the learned Deputy Registrar of Chits, the Revision Petitioner has filed E.P. No. 117 of 2018 before the learned Principal District Judge, Tiruppur for recovery



C.R.P. (NPD) No.192 of 2020

of a sum of Rs.19,89,371/- with subsequent interest till realization, by attaching the property of the 3rd respondent.

3. On notice, the 3rd respondent has filed counter mainly contending that he did not participate in the Arbitration Proceedings at all. He was not served with notice for the Arbitration proceedings and therefore, he was not aware of the award passed thereof. It was also vehemently contended by the 3rd respondent that he has paid the entire amount payable to the petitioner in respect of the Chit subscribed by him. While so, the Arbitration proceedings itself is not maintainable, as against the 3rd respondent. It was also contended that the 3rd respondent did not furnish any security for mortgaging the property belonged to him. While so, the Execution petition in E.P.No.117 of 2018 is not maintainable.

4. On hearing both sides, the learned Principal District Judge, Tiruppur dismissed E.P. No. 117 of 2018 mainly on the ground that the 3rd respondent was not served with any notice in the Arbitration Proceedings and he did not participate in such proceedings. While so, the Execution petition is not maintainable as against the 3rd respondent. Further, the Court below concluded that the property of the respondent nos.2 and 4 were already been



attached. However they were subsequently lifted on the basis of the memo filed by the petitioner himself. In any event when summons were not served on the 3rd respondent, the Execution of the exparte award as against the 3rd respondent, is not legally sustainable. Accordingly, the Court below dismissed the Execution petition filed by the Revision Petitioner, against which the present Revision has been filed.

5. The learned counsel for the petitioner would vehemently contend that the notice was served to all the respondents in the Arbitration Proceedings. Even assuming that notice was not served on the 3rd respondent, his remedy lies only before the Deputy Registrar of Chits, Madurai (South) by filing appropriate application to set aside the exparte award insofar as the 3rd respondent is concerned. However, the 3rd respondent did not do so. While so, the observation of the Court below that notice was not served on the 3rd respondent and he did not participate in the Arbitration Proceedings, cannot be gone into by the Executing Court. The Executing Court cannot sit in the Arm Chair of the Deputy Registrar of Chits, Madurai (South) who has passed the Award after satisfying himself with the arbitration claim after noticing that the respondents therein failed to contest it. In any event, the Executing Court cannot assess and evaluate the merits of the Arbitration Award. When the 3rd



C.R.P. (NPD) No.192 of 2020

respondent did not assail the award passed by the learned Deputy Registrar of Chits, Madurai (South), it is not open to the 3rd respondent to contest the Execution Petition at all.

6. In this context, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Industrial Investment Bank of India Limited Vrs. Biswanath Jhunjhunwala*** reported in **2009 (9) SCC 478** wherein it had been held that the liability of the guarantor and the Principal debtors is Coextensive with each other but not in the alternative. In other words, it had been held by the Hon'ble Supreme Court that both the Principal debtor as well as the guarantor are liable at the same time to the creditors. He also placed reliance on the decision of this Court in ***P.Mannarsswamy Vrs. Margadarsi Chits Limited*** reported in **2010 (4) LW 574** wherein it was contended that the Principal Debtor was not at all proceeded against, but prosecution was launched only against one of the guarantors. Questioning the same, the guarantor has filed the Civil Revision Petition by contending that when the Principal Debtor is very much liable to pay the amount, proceeding only against the guarantor is unjust and arbitrary. However, this Court dismissed the Civil Revision Petition by holding that the Execution Petition can be filed as against the Principal Debtor and the guarantor or the guarantor alone. Even



if the Principal Debtor is left from being proceeded with, a proceeding can be maintained only as against one of the guarantors.

7. On the other hand, the learned counsel for the 3rd respondent submitted that the award has been passed by the learned Deputy Registrar of Chits, Madurai (South), exparte. The 3rd respondent was not given opportunity to contest the arbitration proceedings. Even notice was not served on the 3rd respondent in the Arbitration Proceedings before the learned Deputy Registrar of Chits, Madurai (South). The trial Court taking note of the aforesaid facts and the fact that the order of attachment made against the respondents 2 to 4 were subsequently lifted and they were exonerated from the Execution proceedings, has allowed the application as against the 3rd respondent. It is also submitted that the 3rd respondent has paid the entire amount payable to the petitioner and there is no amount left outstanding. Above all, the 3rd respondent has not submitted any document Mortgaging the property owned by him or stood as guarantor for the amount payable by the 3rd respondent. While so, the Court below is wholly justifiable in dismissing the execution petition of the petitioner and hence he prayed for dismissal of the Civil Revision Petition. Accordingly, the learned counsel for the third respondent prayed for dismissal of the Civil Revision Petition.



8. Heard the learned counsel for both sides and perused the materials

placed on record.

9. It is not in dispute that as against the 3rd respondent herein, Arbitration Proceedings were initiated before the learned Deputy Registrar of Chits, Madurai (South). According to the Revision Petitioner, notice was served to all the respondents in Arbitration Proceedings, but they failed to contest the same. Even the Arbitration proceedings were allowed to be concluded exparte. However, when the petitioner/decreed holder filed the Execution Petition as against the third respondent herein, it was dismissed by the court below on the ground that the third respondent herein was not given any notice in the arbitration proceedings and therefore, he cannot be proceeded against by filing the execution petition. Challenging the order passed by the Execution Court, the present Civil Revision Petition is filed.

10. On notice in the Execution Petition, it was vehemently contended by the third respondent that he was not served with any notice in the Arbitration Proceedings. He did not participate in the Arbitration Proceedings thereby he was deprived of an opportunity to contest the Arbitration Proceedings. It was also contended that he has paid the entire amount payable



C.R.P. (NPD) No.192 of 2020

to the revision petitioner and therefore, Executing the arbitration award against him is legally not correct.

11. This submission of the 3rd respondent cannot merit acceptance. Admittedly, the 3rd respondent stood exparte and the exparte decree passed is still operating against him. The 3rd respondent has not taken any steps to set aside the exparte decree passed against him, while so, he is not entitled to question the maintainability of the Execution petition filed by the Revision Petitioner. Whether the 3rd respondent was served with notice or not cannot be gone into by the Executing Court. When the Arbitration Award passed against the respondents is still continuing against them, the Execution Court is not legally correct in rendering the finding that the 3rd respondent was not served with notice in the arbitration proceedings. Even assuming that the 3rd respondent was not served with notice and he was set exparte, still it is not open to the Executing Court to go beyond the decree and render a finding that the 3rd respondent was deprived of adequate opportunity to contest the Arbitration proceedings. The Executing Court has committed a grave error in sitting in the Arm chair of the Deputy Registrar of Chits who has passed the exparte award. The executing Court is not correct in assessing the merit and legality of the exparte award passed by the learned Deputy Registrar of Chits



C.R.P. (NPD) No.192 of 2020

in the Execution petition filed by the Revision Petitioner herein. The trial Court is not legally justified in considering the fact as to whether the 3rd respondent has paid the entire amount payable to the petitioner or not. These are matters to be dealt with by the learned Deputy Registrar in the Arbitration case filed by the Revision Petitioner and the Executing Court is estopped from rendering any finding thereof. For all these reasons, the order passed by the Court below cannot be sustained and it is liable to be set aside.

12. In the result, the order dated 24.09.2019 passed in E.P. No.117 of 2018 in A.R.C. No. 51 of 2016 on the file of Deputy Registrar of Chits, Madurai (South) stands set aside. The Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed. It is open to the third respondent to take steps to file appropriate petition before the learned Deputy Registrar of Chits, Madurai (South) to set aside the exparte order passed against him in A.R.C. No. 51 of 2016, if he is so advised.

.07.2022

vum

Index : Yes / No

Speaking order / Nonspeaking order

To

1. The Principal District Court, Tirupur
2. The Deputy Registrar of Chits, Madurai (South).



WEB COPY



C.R.P. (NPD) No.192 of 2020

S. KANNAMMAL, J

vum

C.R.P. (NPD) No.192 of 2020
and CMP No.1052 of 2020

.07.2022