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C.R.P.(NPD) No.657 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM : JUSTICE **N.SESHASAYEE**

C.R.P.(NPD) No.657 of 2021
and CMP.No.5636 of 2021

H.Yovan

... Judgment Debtor / Petitioner

Vs.

1.C.Jegajothi

... Decree Holder / 1st Respondent

2.The Manager

LIC of India

Palani Road

Udumalaipettai

Tiruppur District.

... Garnishee / 2nd respondent

(Cause title accepted vide order dated 01.03.2021 made
in CMP.No.3312 / 2021 in CRP.SR.No.13874/2021)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the impugned notice dated 22.01.2020, issued by the Sub Court, Udumalaipettai through its officer, the Deputy Nazir, at the instance of the first respondent styled as an order passed under Order XXI Rule 48 of Code of Civil Procedure in E.P.No.1 of 2020 in O.S.No.113 of 2014 on the file of Sub Court, Udumalaipettai and further restrain the



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second respondent from with-holding the salary of the petitioner and remitting the same to the 1st respondent, until the Execution Court passes an order of attachment of salary of the petitioner and further direct the 1st respondent to refund all the amounts to the petitioner that are received by him from the second respondent, in pursuance to the impugned notice forthwith.

For Petitioner : Mr.M.Sudhakar
for Mr.R.Subramanian

For Respondents : Mr.D.R.Arunkumar [R1]
Mr.Manoj Sreevalsan [R2]

ORDER

The judgment debtor is the revision petitioner herein. This revision is filed challenging the E.P.No.1 of 2020 in O.S.No.113 of 2014 on the file of Sub Court, Udumalpet.

2. An order in E.P.No.1 of 2020 filed at the instance of the first respondent/decreed holder, which he had filed for executing an ex-parte decree for money, directing the attachment of the salary of the judgment debtor, is being challenged here. The grievance of the revision petitioner is that his salary was attached without a notice under Section Order XXI Rule 22 CPC.,



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3. When the matter came up before this Court earlier, there was some confusion as to the exact notice or form that has been sent to the revision petitioner. A report too has been received from the Execution Court, but there is little confusion in that.

4. In the course of hearing, the counsel for the revision petitioner submitted that the revision petitioner/judgment debtor has not been served with notice under Order XXI Rule 22 before the order of attachment was made, and that he was not given an opportunity to show cause on that. He also brought to knowledge of the Court the other issues over the sustainability of which this Court has raised certain doubts. Since it was his grievance that he was not heard before the Court proceeded to pass an order on the E.P., attaching the salary, this Court given the revision petitioner an opportunity to show cause why his salary should not be attached. After all, the judgment debtor is entitled to a right of hearing and this Court does not want him to feel aggrieved on that score.

5.1 The learned counsel for the revision petitioner / judgment debtor submitted that he was set exparte, pursuant to which he filed an application



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to set aside the exparte decree along with an application to condone the delay. Later, these applications came to be dismissed for default. Then to restore them, another application was filed, and that is pending. If this is the cause shown or which he may have shown to the notice under Order XXI Rule 22, if only the said notice was served on him, then this is not the cause for not ordering the attachment of salary. After all procedural law is an hand-maid justice, and a maid shall be a maid, and should not let to master over justice.

5.2 Turning to the other aspects, this Court requires the following particulars from the Execution Court pointedly:

- (a) When was the order of attachment of salary of the defendant made?
- (b) From when the garnishee began to deposit 1/3rd of the salary of the judgment debtor into the account?
- (c) What is the last date during which the garnishee has made that payment?
- (d) What is the total amount that was so deposited by the garnishee?

6. This Court has received the report from the Execution Court, which says



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that no order was passed directing the garnishee to deposit any sum, but by mistake the bailiff has sent a wrong notice.

7.1 The only grievance of the revision petitioner is that he was not heard by the Execution Court in the matter. Now that given the scenario even the Execution Court concedes that a garnishee was not under any direction to deposit the money. It may now hear the revision petitioner. If ultimately the Execution Court finds that the revision petitioner herein is not liable to answer the decree liability, then he may walk with the money which the garnishee has deposited in the Court, if not, the decree holder will be free to withdraw the amount. And, in the eventuality of the Execution Court finds that the revision petitioner is liable for the entire sum, the Execution Court may now pass a formal order directing the garnishee to deposit the balance amount payable, to meet the decree liability, to the extent it will be necessary to satisfy the entire decree liability.

7.2 This Court notes that the garnishee has acted bonafide, and in response to the notice that it has received, believing that it has been served with appropriate authority. Since this Court *prima facie* finds that the revision petitioner may be liable to answer the decree liability, this Court ratifies the



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same, and the money deposited need not be returned to the garnishee nor credited to the account of the revision petitioner, subject however to the outcome of the enquiry herein directed by this Court.

8. The revision is accordingly disposed of. The Execution Court is directed to dispose of the matter within four months, excluding the intervening summer vacation – 2022. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

ds

To:

The Sub Judge
Udumalpet.



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N.SESHASAYEE.J.,

ds

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