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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE T. V.THAMILSELVI

CRP.No.715 of 2019

P.Madheswaran

..4th Judgement Debtor/
4th respondent

..Vs..

1. M/s.Margadarsi Chits Private Limited,
Represented by its Foreman – R.Venkatesh
7/54, 3rd Floor, Ideal Garden Complex,
Junction Main Road,
Salem- 636 004

2. Selvaraj

3. S.Manimekalai

4. A.Anbu Rajendran

..Respondents 2 to 4
Judgement Debtor
1 to 3
Respondents 1 to 3

Prayer:- Civil Revision Petition filed under article 227 of Constitution of India to set aside order and decretal order dated 31.08.2018 in R.E.P.231 of 2014 in A.R.C.No.25 of 2013 passed by the Hon'ble I Additional Subordinate Judge of Salem and consequently, direct the 1st respondent to bring the attachment of immovable property of the 2nd respondent by way of sale in order to realise the execution amount.



For Petitioner : Mr.T.Karunakaran
For Respondent : Mr.D.Shivakumar for R1
R2 – No appearance
R3 – Died

ORDER

This Civil Revision Petition has been filed by the revision petitioner to set aside the order passed in R.E.P.231 of 2014 in A.R.C.No.25 of 2013 dated 31.08.2018 wherein the Trial Court has ordered attachment of salary of 4th respondent/Revision petitioner under Order 21 Rule 48 of CPC.

2. The petitioner herein is the 4th respondent in Execution proceedings in R.E.P.No.231 of 2014 in A.R.C.No.25 of 2013 filed by the Decree holder / 1st respondent herein for recovery of chit money based on the arbitration proceedings. The 2nd respondent herein is the Principal Debtor and other respondents including the revision petitioner are the guarantors. The prized Chit Subscriber committed default in payment of chit subscriptions and therefore, arbitration proceedings was initiated against the 2nd respondent / principal Debtor and other guarantors. In spite of several opportunities given to defend the case, the respondents did not file any reply and hence, they were set exparte and



an award and decree was passed on 28.05.2013. R.E.P No.231 of 2014 was filed to attach the salary of the 4th respondent/revision petitioner herein. An order of attachment was made by the Trial Court on 31.08.2018. Challenging the said order, this Civil Revision petition has been filed before this Court.

3. The learned counsel for the revision petitioner submits that the decree holder has not taken any steps to execute the decree in respect of the property of the 2nd respondent /Principal Debtor even though he is having valuable properties. In spite of exhausting remedy against the 1st respondent/Principal Debtor, the Trial Court has attached the salary of the revision petitioner as such is not in accordance with law. The learned counsel further submitted that while the interim stay was in force, the trial court has ordered attachment of Salary of the revision petitioner which is non-est in the eye of law and therefore, prays to set aside the order of the Trial Court.

4. The learned counsel for the decree holder submits that the revision petitioner is also one of the guarantor in the chit transaction, who is jointly and severally liable to pay the default amount and hence, prays for dismissal of this petition.



5. Heard the learned counsel for the petitioner and the respondent and also perused the materials placed before this Court.

6. On perusal of the record, it is seen that the 2nd respondent is the Principal borrower, who is also the chit Subscriber and he has received the money from the Decree holder as per the Chit auction. The revision petitioner herein is only a guarantor, who was an employee of BSNL. Though an award was passed to attach the properties of the 2nd respondent / principal debtor, the decree holder has not taken any steps to attach the properties of 2nd respondent. More over, inspite of stay granted by this Court, the Trial Court has proceeded with the execution petition and attached the salary of the revision petitioner, who was retired in the year 2021 as such is totally erroneous one and the same is not maintainable and therefore, this Court is inclined to call for explanation from then Presiding Officer of the Trial Court. Accordingly, this Civil Revision petition is allowed. If any amount recovered from the salary of the revision petitioner shall be refunded by the decree holder.

13.10.2022

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Index : Yes / No

Internet : Yes / No



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T. V.THAMILSELVI,J
rka

To

I Additional Subordiante Judge of Salem

CRP.No.715 of 2019

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