



C.R.P. No. 3719 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3719 of 2011

and

M.P. No. 1 of 2011

**Margadarsi Chits Private Limited,
rep. by its Foreman T.L.Anantharaman**

... Petitioner

Versus

- 1. Mr.A.Karthikeyan,
S/o. P.Arumugam**
- 2. Mr. L.Ashok Kumar,
Proprietor,
M/s. Jayalakshmi Traders
MGA Complex,
60-A, Perundurai Road,
Erode-638 001.**
- 3. Dr. K.K.Prachet,
S/o. K.H. Krishnamurthy**

Mrs.Kamalam (died)



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5. Dr.A.Balachandran,
S/o. S. Ayyasamy

6. Mr. A.T.Kannan,
S/o. R.A.Thangavel

7. Mr.S.Ayyasamy

8. Mr.S.Gopinath

(Respondents 7 and 8 brought on record
as LR's of deceased R-4 viz., Mrs.Kamalam
vide court order dated 27.09.2022 made
in C.M.P. No.25083 of 2019 in C.R.P.
No. 3719 of 2011)

... Respondents

PRAYER : Civil Revision Petition is filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 20.06.2011 in E.P.R. No.140 of 2009 in Arbitration Case (MC) No. 38/2006 on the file of II Addl. Subordinate Judg, Erode.

For Petitioner : Mr. D.Shivakumaran

For Respondents : R1 – no appearance

Mr. K.S.Jayaganeshan for R5

R2 & R4 – died

R3, R6 to R8 – not ready in notice



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ORDER

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The Revision Petitioner has filed Arbitration case in M.C.No.38 of 2006 for recovery of money against the respondents 1 to 6. Admittedly, the 1st respondent is the Principal Debtor and the respondents 2 to 6 are guarantors in the arbitration case. Accordingly, the Deputy Registrar of Chits passed an award in Arb. Case in M.C.No. 38 of 2006 directing the respondents to settle the amount, however, the opponents failed to settle the amount. Hence, to implement the award passed in Arb. M.C.No. 38 of 2006, the decree holder filed an application in E.P.R.No.140 of 2009 praying to attach and sell the movables as mentioned in the schedule in order to realise the amount. The said application was strongly objected by the respondents stating that the decree holder ought to have taken steps to execute the decree as against the 1st respondent/principal debtor alone and they are not liable to pay the amount. On hearing both sides and on considering the objections of respondents, the Execution Court allowed the application directing the Decree Holder to execute the decree as against 1st respondent/principal debtor alone. Challenging the said findings, the decree holder preferred this Civil Revision Petition.



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WEB COPY 2. The learned counsel for revision petitioner contented that at the time of filing the execution proceedings, he prayed to attach movables of all the respondents including the Principal Debtor. As the guarantors, the respondents 2 to 6 cannot dictate the execution court to take action against the 1st respondent alone, because they are co-applicants and they are liable to pay jointly and severally along with Principal Debtor/1st respondent. Therefore, it is open to the decree holder to take action against Principal Debtor and also against all the respondents, however, it is not fatal to the proceedings. But, the execution court erroneously dismissed the E.P.R. Application against respondents 2 to 6 and hence, he prayed to set aside the same.

3. The learned counsel for 5th respondent submitted that the decree holder is able to take action against 1st respondent alone and the same was rightly appreciated by the trial court.

4. Heard and considered rival submissions made by learned counsel for petitioner as well as respondents and perused the records.



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5. On perusal of decree, it reveals that Arbitration case in M.C.No.38 of 2006, the decree holder obtained the award as against all the respondents 1 to 6 and admittedly, the 1st respondent is a Principal Debtor and the respondents 2 to 6 are guarantors. As on date, there is no appeal against the award. To implement the award, the Revision Petitioner filed the application in E.P.R. No. 140 of 2009 against all the respondents praying to attach and sell the movables as described in the schedule. On perusal of schedule, there are movables belonging to parties prescribed and the same were brought separately, and they are residing in separate door numbers. So, the Execution Application clearly reveals that the action was taken against all the respondents. As rightly pointed out by the learned counsel for decree holder/revision petitioner, it is open to the decree holder to initiate execution proceedings. Furthermore, all the respondents 2 to 6 are also jointly and severally liable for decree, however, the trial court failed to take note of the said fact. Furthermore, the decree holder has taken action against 1st respondent is sufficient and other respondents are not liable to pay the amount. Therefore, the reasons assigned by the revision petitioner is liable to



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be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial court in E.P.R.No.140 of 2009 is set aside. The decree holder is entitled to proceed execution petition as prayed for. However, the Execution Petition is of the year 2009 and the decree was passed in the year of 2006, the Execution Court is directed to proceed with the execution proceedings and dispose the case within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

II Addl. Sub-Judge,
Erode.



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T.V.THAMILSELVI, J.

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