

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF JANUARY 2022

THE MASTER

A.No. 2372 of 2021

in

E.P.No. 209 of 2018

E.P.No. 209 of 2018:-

1. M.A.M.Kadher

Proprietor of M.A.N.Steel Traders

No.13/19, South leith Castle Street,

Chennai – 28.

2. M.A.Naina Mohammed (died)

LRS already on the recod as Decree Holders

Viz. Saliah (Wife)

M.A.M. Kadher alias N.Abdul Kadher (son)

3. Saliah

Propertrix of Saliah Traders

No.394, (Old No.666),

T.H.Rod, Tondiarpet,

Chennai – 600 081.

: Decree Holders / Plaintiffs

Vs.

Polinner Alloy Casting Ltd.,

Rep.by its Directors

having its Registered office at

No.82, Santhome High Road,

MRC Nagar, Chennai – 600 028.

: Judgment Debtor / Defendant

A.No. 2372 of 2021:-

K.S.Gita

D/o. K.Subbiah,

195, St. Mary's Road,

Alwarpet,

Chennai – 600 018.

... Applicant / Objector

Vs.

1. M.A.M.Kadher

Proprietor of M.A.N.Steel Traders

No.13/19, South leith Castle Street,

Chennai – 28.

2. M.A.Naina Mohammed (died)

LRS already on the recod as Decree Holders

Viz. Saliah (Wife)

M.A.M. Kadher alias N.Abdul Kadher (son)

3. Saliah

Propertrix of Saliah Traders

No.394, (Old No.666),

T.H.Rod, Tondiarpet,

Chennai – 600 081.

:Respondents No. 1 to 3 /

Decree Holders / Plaintiffs

4.Polinner Alloy Casting Ltd.,

Rep.by its Directors

having its Registered office at

No.82, Santhome High Road,

MRC Nagar, Chennai – 600 028.

: Respondents No.4 /

Judgment Debtor / Defendant

Application praying that this Hon'ble Court be pleased to recall the attachment

warrant and prohibitory order dated 22/03/2021 passed in the E.P.No.209/2018 in C.S.No.594/2012 and further directing the Sub-Registrar, Teynampet and the Sub-Registrar, Mylapore to delete the entries made in their Registers over the schedule properties and consequently delete, release and discharge the schedule properties from the proceedings in E.P.NO.209/2018.

This Application coming on this day before this court for hearing, the court made the following order:-

1. This application is filed by the Applicant/Objector to recall the attachment warrant and prohibitory order dated 22.03.2021 passed in the E.P.No.209 of 2018 in C.S.No.594 of 2012 and further directing the Sub-Registrar, Teynampet and Sub Registrar, Mylapore to delete the entries made in their Registers over the schedule properties and consequently delete, release and discharge the schedule properties from the proceedings in E.P.No.209 of 2018.

2. The learned counsel for the Applicant/Objector submitted that the respondent Nos.1 to 3/decree holders filed a money suit in C.S.No.594 of 2012 against the respondent No.4/judgment debtor. The exparte decree and judgment came to be passed on 03.04.2017. Based on the exparte decree, this execution petition has been filed. Even before filing of this suit, in the year 2011, HDFC Bank Limited filed

a Company Petition No.171/2011 before the Hon'ble High Court of Andhra Pradesh against this judgment debtor M/s.Pioneer Alloy Casting Limited and in its order dated 09.11.2011, Hon'ble High Court of Andhra Pradesh ordered for winding up of M/s.Pioneer Alloy Casting Limited. An official liquidator has been appointed. The company is in liquidation process at present. If any claim is made against the company M/s.Pioneer Alloy Casting Limited the same has to be made before the official liquidator attached to the Hon'ble High Court of Andhra Pradesh. This Suit in C.S.No.594 of 2012 itself non-est for not obtaining leave from the Company Court of Andhra Pradesh High Court for the reason.

3. The learned counsel for the applicant/objector further submitted that the property attached in the schedule of the execution petition is applicant/objector's family properties and the same is not company properties. The present execution petition itself is non-executable and the decree dated 03.04.2017 is void ab-initio. The present application for the execution is not executable against applicant/objector's family properties and the same is liable to be dismissed. The decree holder has to approach the official liquidator attached the Hon'ble High Court of Andhra Pradesh. Hence, this application may be allowed.

4. The learned counsel for the decree holders/respondents/plaintiffs

reiterated their averments in the counter stating that the objector had taken out this present application and claims the attached property as family properties without producing any valid proof for the same. The fact that in the year 2011 itself, the defendant company had went into liquidation on the instance of a company petition filed by the HDFC Bank Limited before the High Court of Andhra Pradesh is not known to these decree holders.

5. The learned counsel for the decree holders/respondents/plaintiffs further submitted that the objector had neither stated anything about the schedule mentioned property in the said company petition in terms of inclusion of the said property nor before the official liquidator. It is for the official liquidator who has to raise objection with respect to the proceeding pending before the Hon'ble Court and the present objector is not having any authority to question the attachment order by seeking raise of attachment.

6. The learned counsel for the decree holders/respondents/plaintiffs further submitted that the objector had intentionally allowed her to set ex-parte and now pleads unacceptable pleading before this Court which is only to drag the recovery process. The application filed by the objector is nothing but a gross abuse of process of law which has to be nipped at its tip. Hence, this application may be

dismissed.

7. This Court gave its consideration on both sides arguments.

8. The objector stated that decree passed is non-est in the eye of law. The execution petition is not maintainable and the decree cannot be executed. But objector is a 3rd party and he is not the party to the proceedings of this execution petition. As such he cannot say that the decree is non-est and execution petition is not maintainable. It is the judgment debtor who can resist the execution of decree. The arguments advanced by the objector that decree is non-est and inexecutable is not acceptable.

9. The objector has submitted an order copy dated 09.11.2012 passed by Hon'ble High Court of Andhra Pradesh. It shows that the judgment debtor company has been wound up. It does not reflect anything about the schedule property. If the execution petition cannot be executed against the judgment debtor as stated by the objector, the same has to be contested by the judgment debtor only that too in the execution application only. A third party cannot say that the decree cannot be executed against the judgment debtor.

10. The another contention raised by the applicant is that the decree

holders have to approach official liquidator to get permission to sue against the company. Since no permission is obtained the decree is non-est. The applicant counsel relied upon the following citations for their support.

1. Western Cans Pvt. Ltd., Vs. The Official Liquidator dated 12.04.2013 in Comp.A.No.73 of 2013 in C.P.No.303 of 2010 in the High Court of Madras.

2. Mrs.Vasantha Ramanan Vs. Official Liquidator and Ors. On 18.02.2003

Equivalent citations: 2003 114 CompCas 747 Mad, 2003 47 SCL 710 Mad.

If the company is under liquidation, it is for official liquidator to object the attachment. If the official liquidator objects it is the decree holder who is going to suffer in the last. The applicant who is the 3rd party has no business in that procedure. The citations submitted by the applicants are the matters between the executor and the official liquidator. They have no relevancy to the facts of this case and not applicable.

11. The another contention made by the applicant/3rd party is that the schedule property is not the company property. It is the family property of the objector, so that it cannot be attached. Hence the order of attachment has to be raised. But to show the properties are of her own or her family not even a single piece of paper or evidence is produced before this Court. There is no prima facie material

available on records to show that the properties belong to the objector. The 3rd party/objector has failed to prove or show that the attached properties are her own or family properties. Hence the objector cannot claim any objection over the attachment and ask to raise the order of attachment.

12. In fine, this Court do not find any merits on the application filed by the applicant/objector. Therefore, this application is dismissed. No costs.

Sd./-MASTER

12/01/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 14/02/2022