



C.R.P.No.3368 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3368 of 2022
and C.M.P.No.17905 of 2022

B.Anubama

.. Petitioner

Vs.

M.V.Salai Abaranam

.. Respondent

PRAYER: Civil Revision Petition filed under Article 115 of Civil Procedure Code, pleaded to set aside order the order dated 01.03.2022 passed in E.A.No.2 of 2019 in E.P.No.85 of 2018 by Principal District Judge, Chengalpattu and remand the matter back for considering afresh and stay the proceedings of Execution Petition No.85 of 2018 pending before Principal District Judge, Chengalpattu during the pendency of present petition.

For Petitioner : M/s.S.Namasivayam

For Respondent : M/s.M.Karunanidhi

ORDER

This Civil Revision Petition has been filed challenging the order dismissing the petition filed by the revision petitioner under Section 47 of C.P.C., in E.A.No.2 of 2019 in E.P.No.85 of 2018.



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2. The respondent herein obtained an arbitration award for recovery of Rs.2,57,92,000/- with interest at the rate of 12% from 02.12.2010 to till the date of realization. The said award was put into execution by the respondent by filing execution petition in E.P.No.85 of 2018 on the file of the Principal District Court, Chengalpattu, Kancheepuram District. In the said execution application, the revision petitioner filed petition under Section 47 of C.P.C., seeking dismissal of execution petition on the ground that award amount was already discharged. In the affidavit filed in support of his petition filed under Section 47 of C.P.C., the petitioner had claimed that he discharged the entire award amount payable to the respondent/deeree holder and consequently the execution petition is liable to be set aside.

3. The said petition was resisted by the respondent by filing a counter affidavit wherein he denied the plea of discharge made by the petitioner herein.

4. Before the executing Court, the petitioner herein has not examined any witness and not filed any document in support of his plea of discharge. On behalf of the respondent herein he was examined as R.W.1 and he marked two documents



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namely Exs.R.1 and R.2.

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5. The executing Court dismissed the petition filed by the revision petitioner under Section 47 of C.P.C on the ground that the petitioner failed to lead any evidence in support of the plea of discharge and aggrieved by the same the petitioners are before this Court by way of revision.

6. The learned counsel for the petitioner submitted that in support of petitioner's plea of discharge, petitioner has got documentary evidence and same were not filed before the executing Court inadvertently. Therefore, if an opportunity is given to the petitioner by remanding the matter back to the file of the executing Court, the petitioner is ready to file documentary evidence available with him. The learned counsel also referred to certain documents filed in the typed set of papers to substantiate the plea of discharge.

7. In a revision petition, challenging the order passed by the Court below the petitioner is not entitled to refer to certain documents which were not produced and marked before the Court below. Therefore, this Court cannot rely on the xerox



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copies of the documents enclosed in the typed set of papers.

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8. When the revision petitioner filed petition under Section 47 of C.P.C., with a specific plea of discharge of award amount, it is for him to lead oral and documentary evidences in support of his plea of discharge. In the case on hand, as seen from the impugned order the revision petitioner miserably failed to lead any evidence either oral or documentary evidence in support of plea of discharge. Therefore, executing Court rightly dismissed the petition filed by the revision petitioner under Section 47 of C.P.C., by pleading discharge. Further, the plea of discharge of decretal amount shall be in the manner recognized by law. It would be pertinent to refer to Rule 1 and 2 of Order 21 of C.P.C., which deals with modes of payment in case of money decree and also procedure for recording out of Court decree payment. The relevant rules are as follows:

“1. Modes of paying money under decree.—(1) All money, payable under a decree shall be paid as follows, namely:—
(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or



(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease



to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

2. Payment out of Court to decree-holder.—(1) Where any money payable under a decree of any kind is paid out of Court, [or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor [or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decreeholder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

[(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

- (a) the payment is made in the manner provided in rule 1; or*
- (b) the payment or adjustment is proved by documentary evidence; or*
- (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of*



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rule 1, or before the Court.]

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.”(Emphasis supplied)

9. Therefore in case of money claim, [in the case on hand award sought to be executed is like money decree] the judgment debtor who wants to satisfy the decree must make payment as mandated by Rule 1 and 2 of Order 21. Any payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any executing Court, as mentioned in Rule 2(3) of Order 21. In the case on hand, first of all the petitioner herein failed to lead any oral and documentary evidence in support of plea of discharge. Secondly, the learned counsel for the petitioner by referring to certain xerox copies of documents filed in the typed set of papers tried to argue the discharge of the award. The alleged payments under those un-marked documents were not made by following mandatory procedure contemplated under Rule 1 and 2 of Order 21 of C.P.C. Absolutely, there is no reference about the award number and names of parties. Therefore even assuming this Court can refer to those un-marked documents (which it cannot do) the documents cannot be treated as one relating to discharge of present award under



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execution. Further, the xerox copies of un-marked documents produced in typed set of papers were relating to the period 30.08.2006 to 24.07.2007. In the case on hand, award under execution was passed on 07.07.2014. Therefore, those documents allegedly came into existence nearly 7 years prior to date of passing award may not support the plea of discharge of award amount. Therefore, by no stretch of imagination we can assume those documents now produced in the typed set of papers are relating to discharge of award under execution. In view of the above discussions, I do not find any infirmity in the order passed by the executing Court, dismissing petition filed under Section 47 of C.P.C filed by the revision petitioners. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

The Principal District Judge,
Chengalpattu.



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S.SOUNTHAR, J.

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