



C.R.P.No.2465 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.08.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

**C.R.P.No.2465 of 2022
and
CMP.No.12730 of 2022**

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Petitioner

Vs.

1.M/s.Shriram Chits Tamilnadu (P) Ltd.,
Rep.by its Authorized Signatory,
Sivaraja (Law Officer)

2.A.Sivashankaran

3.P.S.Sankar

4.Koteeswaran

5.Amudha.R.

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order of attachment dated 24.06.2022 passed in E.P.No.2010 of 2021 in ARC.No.10 of 2014 on the file of X Assistant Judge, City Civil Court at Chennai.

For Petitioner : Mr.J.R.K.Bhavanantham



ORDER

This Civil Revision Petition has been filed challenging the order dated 24.06.2022 passed by the learned X Assistant Judge, City Civil Court, Chennai, made in E.P.No. 2010 of 2021 in ARC No.10 of 2014.

2.The revision petitioner is the 5th judgment debtor, against whom, the 1st respondent / decree holder has initiated execution proceedings in E.P.No.2010 of 2021 in order to realize an arbitral award passed in favour of the 1st respondent on 19.06.2014. The petition was filed to recover the decree amount from the salary of the revision petitioner / 5th judgment debtor. The said petition was allowed and the order of attachment of the salary of the revision petitioner/ 5th judgment debtor has been passed. Aggrieved over that this revision petitioner has been preferred.

3. Heard the learned counsel for the revision petitioner and perused the material available on record.

4. The learned counsel for the revision petitioner submitted that the 2nd respondent is the principal debtor and the revision petitioner is only a guarantor; the decree holder/ 1st respondent without



exhausting the remedy against the respondents 2 to 4 (judgment debtors 1 to 3) had proceeded the execution proceedings to attach the salary of the revision petitioner/ 5th judgment debtor.

5. The revision petitioner is working outside the jurisdiction of the Executing Court; despite the same, the decree holder has not sought for the execution of the decree by percept under Section 46 of the Civil Procedure Code; in such case, the Executing Court is not competent to execute the decree or attach any property belonging to the judgment debtor and specified in the percept. The award passed in favour of the 1st respondent through arbitration would bind the revision petitioner and the respondents 2 to 5 jointly and severally. The validity of the award is not challenged. Neither is there any order to stay the operation of the award. So the Executing Court cannot refrain from executing the award in the manner known to law. If the salary of the revision petitioner is attached, more than his share of liability, the revision petitioner can only have the right of recovering the same from the principal borrower, who is the 2nd respondent herein. Since the decree has been passed by binding the revision petitioner and the other respondents 2 to 5 jointly and severally, the decree holder had opted to attach the salary of the revision petitioner.



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6. The next contention of the revision petitioner is that since he is residing outside the jurisdiction of the Executing Court, the procedure contemplated under Section 46 of the Civil Procedure Code ought to have been followed in order to continue the attachment of the salary made against the revision petitioner. The revision petitioner being a government servant, the salary of the government servant towards the realizing the decree amount can be made in accordance with order under Order XXI Rule 48 of the civil procedure code. In case, the government servant is working beyond the jurisdiction of the Executing Court the procedure contemplated under section Order XXI Rule 48(1)(b) of the Civil Procedure Code should be followed.

7. Order XXI Rule 48(1)(b) of the Civil Procedure Code reads as under:

***"Rule 48 Order XXI of Code of Civil Procedure
1908 "Attachment of salary or allowances of
servant of the Government or railway company or
local authority"***

1....

*(b) where such salary or allowances are to the disbursed
beyond the said limits, the officer or other person within
those limits whose duty it is to instruct the disbursing
authority regarding the amount of the salary or
allowances to be disbursed shall remit to the Court the*



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amount due under the order, or the monthly installments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Court. "

For attaching the salary of the government servant, there is no difficulty in following the same.

8. The learned trial Judge had opted to invoke the procedure as stated above and passed the order to attach the salary of the revision petitioner. The above order does not suffer from any legal infirmity and does not require any interference.

Thus, the Civil Revision Petition is **dismissed**. The order of the learned X Assistant Judge, City Civil Court, Chennai, made in E.P.No. 2010 of 2021 in ARC No.10 of 2014, dated 24.06.2022, is confirmed. Consequently, connected miscellaneous petition is dismissed.

04.08.2022

Index : Yes/No
Speaking Order : Yes / No

jrs



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To

1. The Registrar,
City Civil Court, Chennai.



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R.N.MANJULA, J.,

jrs

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