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C.R.P. No.1139 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD) No.1139 of 2017
and C.M.P.No.5450 of 2017

M/s.Sharp Tools, Machinery Division
9/10, Sitra Road,
Sharp Nagar, Kalapatti
Coimbatore-641 035

... Petitioner

Vs.

1.M/s.ARC-TEC Systems Limited
The Company in Liquidation
Rep. by its Official Liquidator
High Court of Bombay
The O/o the Official Liquidator
High Court, Bombay 5th Floor
Bank of India Building, M.G.Road,
Mumbai – 400 023

2. The District Collector
Coimbatore

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India praying to set aside the order dated 23.12.2016 made in POP No.356/2010 on the file of the Principle District Judge, Coimbatore.

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For Petitioner : Mr.Mukunth
for M/s.Sarvabhauman Associates
For Respondents : Dr.S.Suriya for R2
Additional Government Pleader
No appearance of R1

ORDER

This Civil Revision Petition has been filed to set aside the order dated 23.12.2016 made in POP No.356/2010 on the file of the Principle District Judge, Coimbatore.

2. The first respondent herein is the plaintiff and the petitioner and the 2nd respondents are the defendants in unnumbered Original Suit filed in the year 2009. The first respondent/plaintiff had filed the said suit for damages claiming a sum of Rs.79,33,578/- along with interest from the petitioner herein. Out of which, a sum of Rs.5,95,019/- has to be paid as Court fee.

3. The case of the petitioner is that the first respondent company was duly incorporated with a capital of Rs.5,00,000/- and placed orders with them for supplying erection and commissioning of the plant for



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manufacturing stik electrodes. Thereby, the first respondent owes a sum of Rs.15,93,680/- to the petitioner, for which, the petitioner had already filed a suit for recovery in O.S.No.458 of 2009, which is pending before the Fast Track Court III, Coimbatore.

4. Learned counsel for the petitioner would submit that the petitioner is not liable to pay any amount to the first respondent herein. He further contended that though the first respondent's company is under liquidation, he is having company assets of more than 35 crores . Therefore, he is having sufficient means to pay the Court fee and not entitled to adjudicate him as an indigent person. While filing the suit, the first respondent also filed a petition to treat him as pauper in P.O.P.No.356 of 2010 and the learned Judge has erroneously allowed the said petition without appreciating the fact that the properties of the 1st respondent were yet to be brought for sale and it was still not known as to what would be the balance remaining after adjusting the dues to the secured creditor and as to whether the 1st respondent would receive the excess amounts after the sale and adjustment of the dues of the creditors.



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5. According to the learned counsel for the second respondent, as per Order 33 Rule 1 of CPC, the first respondent herein is considered to be an indigent person (a person not possessed sufficient means is an indigent person) since all his properties were attached with the Debt Recovery Tribunal.

6. Heard the learned counsel for the petitioner and the learned counsel for the second respondent. Even after printing the name of the first respondent in the cause list and notice being served, there is no representation on behalf of the first respondent.

7. On perusal of the records filed in support of the pauper original petition, it is seen that the first respondent company ordered to be wound up by an order of Hon'ble High Court of Bombay in Company Petition No.305 of 2010 and 295 of 2011 and Liquidator was appointed to continue the proceedings of the company. Though the first respondent's company having the property, the Debt Recovery Tribunal attached all the property and sale



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notices were issued by the consortium banks. Hence, the first respondent is nothing but a pauper. Considering the fact that the first respondent's company is under liquidation and all his properties were attached by the Debt Recovery Tribunal, he was declared as an indigent person by the Court below vide order dated 22.12.2016 in P.O.P.No.356 of 2010. The learned Judge has rightly appreciated the fact and allowed the said petition. Therefore, this Court finds no infirmity or illegality in the order passed by the court below.

8. Accordingly, this Civil Revision Petition is dismissed. No order as to costs. Consequently connected miscellaneous petition is closed.

23.06.2022

msv

To

1. The Principle District Judge, Coimbatore.
2. The District Collector
Coimbatore



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J.NISHA BANU,J.

msv

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