



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2022

Pronounced on : 15.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.2242 of 2017

and

CMP.No.10617 of 2017

A.Hasan Sheriff

... Petitioner / Respondent 4 / Judgment Debtor 4

Vs.

M/s.Margadarsi Chits Pvt. Ltd., Salem

Represented by its Foremen, K.Venkatesan

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 11.11.2016 in E.A.No.44 of 2013 in E.P.No.60 of 2012 in A.O.P.No.68 of 2007 on the file of the II Additional District Court, Salem.

For Petitioner .. Mr.T.Karunakaran

For Respondent .. Mr.D.Shivakumaran

**ORDER**

WEB COPY The Civil Revision Petition has been filed by the judgment debtor

No.4 questioning an order dated 11.11.2016 passed by the II Additional District Judge, Salem in E.A.No.44 of 2013 in E.P.No.60 of 2012 in A.O.P.No.68 of 2007. The said application in E.A.No.44 of 2013 had been filed under Section 47 of CPC to dismiss the Execution Petition in E.P.No.60 of 2012.

2.The respondent, M/s.Margadarsi Private Limited, Salem had filed A.O.P.No.68 of 2007 before the Deputy Registrar of Chits, Salem under Section 64 of the Chit Funds Act, 1982. The revision petitioner herein was the 4th respondent. The revision petitioner and the other respondents did not appear during the said proceedings and therefore, an exparte award was passed on 11.03.2008.

3.Necessity to institute the Arbitration Petition was that the 1st respondent therein had participated in chit proceedings and had stood benefited to a sum of Rs.10,00,000/-, which was to be repaid in 40 months with monthly repayment of Rs.25,000/-. There was a default in repayment. Claiming that a sum of Rs.6,88,008/- was due and payable, and acting in accordance with the terms of the borrowal which provided, disputes to be referred to arbitration, A.O.P.No.68 of 2007 had been



commenced and an award was passed on 11.03.2008. The revision petitioner herein stood guarantee for repayment of the amount. The award directed that the amount should be repaid jointly and severally by all the respondents.

4. During the arbitration proceedings, the present revision petitioner had been served with notice, but he did not choose to participate.

5. Thereafter, the respondent herein, sought to enforce the award under Section 36 of the Arbitration and Conciliation Act, 1996. An Execution Petition was presented and it finally came up for consideration before the II Additional District Judge, Salem. The Execution Petition had been filed by including the accrued interest for a total sum of Rs.13,13,290/-. It had been filed against all the judgment debtors. It had also been mentioned that an earlier Execution Petition had been filed in E.P.No.56 of 2010, which had been dismissed on 17.03.2011. Along with the Execution Petition, the particulars of movables available with the judgment debtors had also been given in the schedule and a relief was sought for attachment of the movables for recovery of the amount.



6.The revision petitioner herein, then filed EA.No.44 of 2013 in the aforementioned Execution Petition / EP.No.60 of 2012, taking advantage of Section 47 of CPC and claimed that the Execution Petition should be dismissed on the ground that the respondent herein had not followed the provision under Rule 55 (2) of the Tamil Nadu Chit Funds Rules and that there had been violation of the procedure for execution of award as provided under Section 49 of the Chit Funds Act, 1982. It was also stated that there had been violation of the provisions under Order XXI Rule 6 CPC., 1908. It was further stated that all these aspects will have to be examined and therefore, the Execution Petition was not maintainable and that it should be dismissed.

7.A counter had been filed by the respondent herein denying violation of any rule or provision under the law. It was pointed out that the revision petitioner had received summons issued by the Arbitrator, but had chosen not to participate in the arbitration proceedings. It was also asserted that certificate under Section 71 of the Chit Funds Act, 1982 had been obtained from the Deputy Registrar of Chits and had been filed along with the Execution Petition. It was stated that the Court had verified such certificate and only thereafter was the Execution Petition



taken on file. It was also stated that the liability of the guarantors were co-extensive and the decree holder had an option to proceed against any one of the judgment debtor and it is not for the judgment debtor to dictate against whom the decree holder should proceed. It was also pointed out that the revision petitioner had not disputed that he stood guarantee for repayment of the loan. It was also pointed out that the Execution Petition cannot go beyond the decree. It was also stated that the provisions under Order 21 Rule 6 CPC had been complied with and there was no irregularity in the filing of the Execution Petition. It was urged that the application under Section 47 should be dismissed.

8. The application under Section 47 CPC in EA No.44 of 2013 was taken up for consideration by the II Additional District Court, Salem and the order dated 11.11.2016 passed by the said Court is challenged in this revision petition.

9. Heard arguments advanced by Mr.T.Karunakaran, learned counsel for the revision petitioner and Mr.D.Shivakumaran, learned counsel for the respondent.



10.The fact that the respondent had advanced money in chit transaction to a subscriber and that the said transaction was lawful is not in dispute. The fact that the present revision petitioner stood guarantee for repayment of the amount to which the subscriber stood benefitted is also not in dispute. The fact that if any dispute arose over the said transaction and / or repayment, the parties had contested aggrieved to refer such dispute to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 is again not in dispute. The fact that the respondent herein, owing to non-repayment of the amount due had referred that dispute to arbitration and an Arbitration Tribunal had taken on file the reference and had passed an award in AOP.No. 68 of 2007 on 11.03.2008 is also not in dispute. The fact that the present revision petitioner had been served with notice during the arbitration proceedings and had decided not to participate in the proceedings and was therefore set ex-parte is also not in dispute. The further fact that the award was passed directing that the amount should be paid jointly and severally by all the respondents to the arbitration proceedings is also not in dispute.

11.The position of law that the respondent as the decree holder had the right to proceed against all the judgment debtors or against



anyone of the judgment debtors cannot be disputed and no right vests with any of the judgment debtors to question such step taken by the decree holder. The fact that the respondent herein, as decree holder had filed EP No.60 of 2012 against all the judgment debtors is also a fact which cannot be disputed. The fact that among all the judgment debtors, the present revision petitioner / judgment debtor No.4 had alone questioned the execution proceedings is again not in dispute. The revision petitioner had questioned the award by filing E.P.No.60 of 2012 under Section 47 of the CPC.

12. Section 47 of CPC relates to the procedure to be followed by the Court, executing a decree and it had been provided that questions arising between the parties to the suit in which a decree had been passed shall be determined by the Court executing the decree and not by a separate suit.

13. Section 47 of CPC is as follows:-

“47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution,



discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

*(2) * * * **

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b)all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”



14.The revision petitioner contends that the Execution Petition stands vitiated owing to the fact that the Deputy Registrar of Chits had not forwarded the award and also the certificate under Section 71 of the Chit Funds Act, 1982. This is an issue on fact. It can be discernible on a plain perusal of the Execution Petition. If a certificate under Section 71 of the Act, is available as asserted by Mr.D.Shivakumaran, learned counsel for the respondent, then this ground fails.

15.It must be noted that any award passed by the Registrar of Chits under Section 79 of the Chit Funds Act, 1982 is executed by a Civil Court as if, it is decree of the Court and this provision is given under Section 71 of the Act. Therefore, the award, itself is a decree and there is no requirement of transmission of the award. A perusal of the order under revision reveals that the Execution Court had asserted that the Execution Petition had been presented in proper manner and there was no violation of any procedure.

16.It must also be kept in mind that under the Arbitration and Conciliation Act, 1996, an award passed by an Arbitral Tribunal is deemed to a decree of the Civil Court and under Section 36 of the said Act, the enforcement of an award, is by presenting the award before a competent Civil Court and seeking enforcement in accordance with the



provisions of the Code of Civil Procedure. Therefore, for execution the award cannot be presented before the Arbitral Tribunal. The Arbitral Tribunal, it must be kept in mind, is not a Civil Court. The Tribunal become *functus officio* once an award is passed. Thereafter, the award has to be presented before the competent Civil Court for execution in accordance with the provisions under the Code of Civil Procedure. This procedure applies even to an award passed under the provision of the Chit Funds Act, 1982.

17. In view of the aforesaid reasoning, the grounds raised in the revision cannot be countenanced. A lawful award has been passed. The award had been presented before the executing Court. The word 'Court' had also been defined under the Arbitration and Conciliation Act, 1996 under Section 2(e). The definition does not include an Arbitral Tribunal. The Arbitral Tribunal is a creature of the statute for the limited purpose to examine the reference made by the parties to arbitrate a dispute arising out of an agreement containing a clause to refer a dispute to arbitration.

18. Therefore, I hold that the Execution Petition, in the instant case had been lawfully filed and is maintainable. The issues raised by the



revision petitioner does not stand the scrutiny of this Court and are rejected. The respondent is entitled by law, to proceed further, to execute the award passed by the Tribunal.

19.The Civil Revision Petition therefore, fails and it is dismissed with a direction to the II Additional District Court, Salem to proceed further with E.P.No.60 of 2012 in manner known to law. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.03.2022

Internet:Yes/No
Index:Yes/No
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To
The II Additional District Court, Salem.



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12

C.V.KARTHIKEYAN,J.

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Pre-delivery order made in
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