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C.R.P.No.255 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.255 of 2023

and

C.M.P.No.2085 of 2023

Anushiya Begam

... Petitioner

Vs.

The Shriram City Union Finance Limited,
Represented through
N.Vengatesan,
No.289/7A,
Salem Main Road, Anna Nagar,
Kallakurichi,
Villupuram District.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order in E.A.No.70 of 2021 in E.P.No.25 of 2021 in A.C.P.No.116 of 2018 dated 14.09.2022 on the file of the 3rd Additional District Judge, Kallakurichi, Villupuram District and allow this Civil Revision Petition.

For Petitioner

: Mr.D.Nellaiappan



ORDER

The Civil Revision Petition has been filed against the order dated 14.09.2022 passed in E.A.No.70 of 2021 in E.P.No.25 of 2021 in A.C.P.No.116 of 2018 on the file of the III Additional District Judge, Kallakurichi, Villupuram District.

2. The revision petitioner is the respondent in the Execution Petition filed in E.P.No.25 of 2021. The husband of the revision petitioner availed loan facility for the development of his business from the 1st respondent/ The Shriram City Union Finance Limited. He was a defaulter and the 1st respondent initiated action for recovery of money in A.C.P.No.116 of 2018. The Court passed decree in favour of the 1st respondent and based on the decree, Execution Petition was filed in E.P.No.25 of 2021.

3. The revision petitioner filed E.A.No.70 of 2021 under Section 47 of C.P.C., to declare the decree as non executable. The Execution Court adjudicated the issues and made a finding that the scope of Section 47 of C.P.C., cannot be expanded for the purpose of adjudication of disputed issues. Arbitration award passed in A.C.P.No.116 of 2018 became final and the revision petitioner has not chosen to file any appeal against the award.

While so, the Execution Court cannot entertain an application under Section



47 of C.P.C., for the purpose of adjudicating certain issues raised on merits in the application.

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4. This Court is of the considered opinion that Section 47 (1) stipulates that *“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.”*

5. Therefore, the questions raising between the parties must be in relation to the execution of decree and thus, adjudication of fresh issues or the issues already adjudicated in the suit on merits are impermissible.

6. Certain observations made in the judgments are factual findings, which would not provide a ground for nullifying the validity of the judgment and decree otherwise passed on merits. Inferences drawn based on documents or relying on the arguments or judgments advanced on behalf of the parties to the *lis* also cannot be a ground to invoke Section 47 of C.P.C. At the outset, remedy is an appeal contemplated under the law and not to file an application in the Execution Proceedings to invalidate the decree otherwise passed on merits.



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7. Judgments delivered became final in respect of the Court concerned. Re-adjudication of merits are impermissible in Execution Proceedings. The Court delivered judgments itself cannot revisit the validity of the judgment by expanding the scope of Section 47 of C.P.C., Grounds for appeal cannot be grounds to entertain application in Execution Proceedings, which is beyond the scope of the spirit of Section 47 of C.P.C., Grounds raised by the judgment debtor may be meritorious on some occasions, even then the remedy would be an appeal and not application in Execution Proceedings.

8. The decree holder is entitled to enjoy the fruits of the decree. The Execution Proceedings are to be disposed of within a period of six months. Scope of Section 47 for raising certain objections cannot be expanded for the purpose of adjudication of issues on merits. Thus, the language employed in Section 47 of C.P.C., cannot be misinterpreted for the purpose of entertaining an application for considering the grounds on merits or otherwise. Thus, in the present case, the trial Court has rightly considered the issues.



9. In view of the fact that in the present case, Arbitral award was passed against the revision petitioner and the grounds raised in the application filed under Section 47 of C.P.C., may be a ground for an appeal, but certainly it cannot be adjudicated in the Execution Proceedings initiated by the 1st respondent/decreed holder.

10. This being the factum, this Court is not inclined to entertain the Civil Revision Petition and accordingly, the order dated 14.09.2022 passed in E.A.No.70 of 2021 in E.P.No.25 of 2021 in A.C.P.No.116 of 2018 on the file of the III Additional District Judge, Kallakurichi, Villupuram District stands confirmed. Consequently, the Civil Revision Petition in C.R.P.No.255 of 2023 is dismissed. No costs. Connected miscellaneous petition is closed.

07.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The III Additional District Judge,
Kallakurichi, Villupuram District.



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S.M.SUBRAMANIAM, J.

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