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CRP Nos. 378, 380, 382 & 383 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.02.2023

Delivered On : 24.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition Nos.378, 380, 382 & 383 of 2023

and

C.M.P.Nos.3105, 3117, 3119 & 3140 of 2023

Mrs. Prithi

.. Petitioner in all Petitions

Versus

Mr. K. Kanagasabapathy

...Respondent in all Petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to strike off the Execution Petition Nos.4,5,3 & 2 of 2022 in O.S.No.4 of 2017 on the file of the Family Court, Villupuram.

For Petitioner

in all Petitions

:

Mr. V. Ramamurthy

For Respondent

in both Petitions

:

Mr. Srinath Sridevan

Senior Counsel

for Mr. R. Udaya Kumar

COMMON ORDER

The issues involved in all these Civil Revision Petitions is one and the same. The learned counsel for both sides have adduced common arguments for



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consideration. Therefore, all the Civil Revision Petitions are taken up together and disposed off by this Common Order.

2. C.R.P. No. 378 of 2023 is filed to strike off the Execution Petition No.4 of 2022 in O.S. No. 4 of 2017 on the file of the Family Court, Villupuram. E.P. No. 4 of 2022 in O.S. No. 4 of 2017 is filed by the Respondent herein against the Revision Petitioner herein seeking appointment of Garnishee under Order XXI, Rule 46A of Civil Procedure Code.

3. C.R.P. No. 380 of 2023 is filed to strike off the Execution Petition No.5 of 2022 in O.S. No. 4 of 2017 on the file of the Family Court, Villupuram. E.P. No. 5 of 2022 in O.S. No. 4 of 2017 is filed by the Respondent herein against the Revision Petitioner herein seeking execution of decree by way of detention of the Judgment Debtor to civil prison for disobedience of the order dated 30.09.2019 under Order 21, Rule 32 of Civil Procedure Code.

4. C.R.P. No. 382 of 2023 is filed to strike off the Execution Petition No.3 of 2022 in O.S. No. 4 of 2017 on the file of the Family Court, Villupuram. E.P. No. 3 of 2022 in O.S. No. 4 of 2017 is filed by the



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Respondent herein against the Revision Petitioner herein seeking the relief of appointment of Receiver/Administrator to manage and preserve the Suit property and to receive rents/profits from the property, until the Minors, i.e., K. Ashwanth, aged 13 years and K. Bhavana, aged 9 years attained their majority under Section 51 r/w. Order XL, Rule 1 of Code of Civil Procedure.

5. C.R.P. No. 383 of 2023 is filed to strike off the Execution Petition No.2 of 2022 in O.S. No. 4 of 2017 on the file of the Family Court, Villupuram. E.P. No. 2 of 2022 in O.S. No. 4 of 2017 is filed by the Respondent herein against the Revision Petitioner herein seeking execution of decree by way of delivery of movable property viz., cheque books, register and monies to the tune of Rs.1,00,000/- (Rupees One Lakh only) under Order XXI, Rule 31 of Code of Civil Procedure.

6. The Revision Petitioner herein, as plaintiff, has filed the suit in O.S. No. 4 of 2017 for the relief of permanent injunction to restrain the Respondent herein from in any manner interfering with the possession of the suit property and for other reliefs. On notice, the Respondent herein has filed Counter Claim claiming to appoint him as guardian for the suit properties.



7. It is an admitted fact that the Revision Petitioner as well as the Respondent got acquainted with each other and by passage of time, their friendly association had blossomed into a love affair. Subsequently, their marriage was solemnised on 29.05.2006 in Pondicherry. Due to the wedlock, two children viz., Ashwanth and Bhavana have born. However, the matrimonial life did not last longer as it was marred by frequent quarrel.

8. It is pertinent to mention that the Revision Petitioner is the adopted daughter of late. Shanmugasundaram @ Jeyabalan and Kalavathy. The said Shanmugasundaram had immovable properties such as Marriage halls and others. The said Shanmugasundaram had executed a Will registered as document No. 23 of 2007 as per which the properties owned by him can be enjoyed by the Revision Petitioner until her lifetime and thereafter, it will devolve on her two children. It is also stated that Mr. Shanmugasundaram died on 15.09.2012 and the Will came into force.

9. According to the Respondent, the Revision Petitioner had illicit intimacy with one Subhajit De and it was unearthed by the Respondent herein. This was also said to be the cause for matrimonial rift between the parties. On the other hand, the Revision Petitioner denied having any such relationship



with the said Subhajit De and such an allegation has been made by the

Respondent only to drive the Revision Petitioner out of the matrimonial house and to usurp the properties of her father covered in the Will. While so, the Respondent herein has given a complaint before the Lawspet Police Station by alleging that the said Subhajit De and the Revision Petitioner herein have attempted to murder him. In this context, a case in Crime No. 18 of 2018 was registered against the said Subhajit De and the Revision Petitioner for the offences under Sections 109, 294 (b), 323, 342, 506 (i), 497 and 34 of IPC. In such circumstances, the Revision Petitioner has filed CrI.OP No. 21325 of 2018 seeking to quash the said first information report in Crime No. 18 of 2018. Similarly, the Respondent herein has filed CrI.OP No. 18529 of 2019 before this Court seeking police protection from the Revision Petitioner herein and others. The Respondent has also filed CrI.OP No. 18647 of 2019 praying to direct the Respondent-police to register a first information report on the basis of his complaint dated 10.07.2019 and to file a final report.

10. When the aforesaid Criminal Original Petitions were taken up for hearing, this Court directed the parties to appear before the Mediation and Conciliation Centre to explore the possibility of a settlement of the dispute. In the Mediation, the Respondent expressed his willingness for reunion. The



Revision Petitioner also consented. Therefore, the dispute has been amicably settled and it was also recorded as follows:

“Now this mediation agreement witnessed as follows:

1. The schedule property shall not be alienated or leased out at any circumstance but it can be rented out.

2. The schedule properties shall be properly protected and physically hand over to the minor children K.Ashwanth and K.Bhavana, after the late life interest of the second party.

3. It is agreed that the parties will administer and maintain the schedule mentioned property jointly.

4. The income arising out of the schedule property after appropriating all the upkeep expenses shall be divided into four equal portions (25%) and has to be utilized as follows:

a) First 1/4th has to be deposited in the account of second party Mrs.Prithi, at present and later new account should be opened.

b) Second 1/4th has to be deposited in the account of of their minor son K.Ashwanth, at present and later new account should be opened.

c) Third one 1/4th has to be deposited in the account of of their minor daughter K.Bhavana, at present and later new account should be opened.

d) Last 1/4th has to be utilised for their family maintenance and expenses.

5. The parties agree to form their new matrimonial home in Villupuram.

6. The parties agreed to close all the pending litigation based on the mediation agreement.

a) The party of the first part will endorse “no objection” in the petition to set aside the ex-parte order which was filed and is now pending in O.S.No.4 of 2017 on the file of the Hon'ble Family Court, Villupuram. After the Suit is taken back on file the suit has to be disposed of recording the mediation agreement.

b) The first party has no objection for quashing the Crl.O.P.No.21325 of 2018 in view of the mediation agreement.

c) Crl.O.P.No.18529 of 2019 and Crl.O.P.No.18647 of 2019 has to be closed based on the mediation agreement.

d) Crl.M.P.No.11245 of 2019 has to be closed based on mediation



agreement.

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7. *The second party shall not have any contact with any third parties including Mr.AVR Shekhar, Mr.Sukumar, Mr.Dakshinamurthy and Mr.Subhajit De in any manner.*

8. *There should not be any interference by any third parties especially Mr.AVR Shekhar, Mr.Sukumar, Mr.Dakshinamurthy and Mr.Subhajit De in any manner.*

9. *The parties have to repay the existing personal loan and vehicle loans from the upcoming expenses.*

10. *The parties agree to repay from the upcoming expenses the existing housing loan availed in Bank of India, Puducherry Main Road Branch or in the alternative the parties agree to sell away the property is situated at AVM apartment, 23rd cross Street, Krishna Nagar, Lawspet, Puducherry to settle the loan.*

11. *The sale agreement registered as Doc.No.481 of 2017 on the file of SRO, Vanur will be cancelled and the advance sale consideration will be repaid from the upkeep expenses.*

12. *If any of the clauses mentioned herein is violated by either of the parties, they can approach the appropriate forum for suitable relief.”*

11. In terms of the amicable settlement arrived at before the Tamil Nadu Mediation and Conciliation Centre attached to this Court in Crl. O.P. Nos. 21325 of 2018 & 18529 of 2019, the Suit in O.S. No. 4 of 2017 as well as the Counter claim filed by the Respondent herein were disposed of in terms of the settlement between the parties.

12. In terms of the compromise, both the Husband and Wife had to ~~restitute~~ the conjugal rights and the properties have to be administered jointly.



However it is stated that the Respondent had never shown interest to join her.

Rather, the Respondent/Husband violated the compromise entered into with the Revision Petitioner. In such circumstances, the Revision Petitioner herein has filed MOP. No. 200 of 2020 before the Family Court, Puducherry claiming maintenance and the same is pending.

13. On the other hand, the Respondent/Husband has filed E.P. Nos. 2 to 5 of 2022 for the relief stated supra. That apart, the Respondent has also filed Cont. P. No. 271 of 2020 seeking to restrain the Revision Petitioner from interfering with his possession in the minor's properties.

14. The learned counsel for the Revision Petitioner submits that the Respondent seeks to challenge the judgment and decree dated 30.09.2019 in O.S. No. 4 of 2017 and counter claim in O.S.No.4 of 2017 by filing the Execution Petition. In fact, the decree is not executable on various grounds, particularly, on the ground that the Respondent/Husband had played fraud on the Revision Petitioner before the Mediation Centre. What had been attempted to be executed by way of Execution Petition was already exhausted through Contempt Petition before this Court in Sub Appl. Nos.166 & 167 of 2020 in Cont. P. No.271 of 2020 which were dismissed on 23.07.2021. Therefore, the



Execution Petition is barred by *res judicata*. According to the Compromise decree, the Revision Petitioner had to administer the properties jointly, instead, the Respondent violated this term by executing agreement with tenants and harvesting the coconut farm on his own. It is also stated that civil arrest against a women in a Execution Petition is prohibited under Section 56 of Civil Procedure Code.

15. The learned Counsel for the Revision Petitioner also invited the attention of this Court to the Execution Petitions enclosed with the typed set of papers wherein the Family Court had raised queries as to the maintainability of the Execution Petition and returned them inasmuch as there is no such decree passed by the Court. In effect, the learned Judge, Family Court, Villupuram has returned the Execution Petitions as follows:-

E.P. No. 2 of 2022 in O.S. No. 4 of 2017

“1. There is no such decree passed by this Court. Hence, it may be stated that how this E.P is maintainable?

2. There is no clause in the mediation agreement regarding delivery of movable properties and the relief seems to be relating to a subsequent event. Hence it may be stated that how this E.P is maintainable?

3. Advocate's attestation to be obtained in affidavit.

*4. Blanks to be filled up in vakalath
Time 2 weeks.”*



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E.P. No. 03/2022 in O.S. No. 4 of 2017

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“1. It may be stated that how the relief sought for is maintainable, when there is no such decree passed.

2. Name of the proprietor to be mentioned.

3. Advocate's attestation to be obtained in affidavit.

4. Blanks to be filled up in vakalath.

Time 2 weeks.”

E.P. No.04/2022 in O.S. No. 4 of 2017

“1. How the relief sought for is maintainable?

2. Name of the proprietor to be mentioned.

3. Blanks to be filled up in affidavit and vakalath.

Time 2 weeks.”

E.P. No .05 of 2022 in O.S.No.4 of 2017

“1. Advocate's attestation to be obtained in affidavit.

2. Blanks to be filled up in vakalath.”

16. The learned Senior Counsel for the Respondent would vehemently object the line of the argument of the learned Counsel for the Revision Petitioner by stating that the relationship of the parties is to be understood to appreciate the facts leading to the filing of Execution Petition.

17. The learned Senior Counsel for the Respondent submitted that the



Revision Petitioner and the Respondent married after love affair.

Subsequently, two children were born to them. However, matrimonial dispute cropped between them. It is the contention of the learned Senior Counsel for the Respondent that the Revision Petitioner, with the help of some men attempted to harm the husband. Therefore, the husband filed Criminal Complaint against the Revision Petitioner and other persons. Thereafter, counter complaint was filed by the Revision Petitioner against the Respondent based on which, two Criminal Original Petitions came to be filed. The Revision Petitioner-Wife also filed Criminal Original Petition as Crl. O.P. No. 21325 of 2018 for quashing of FIR in Crime No. 18 of 2018 in respect of complaint filed by husband. The Respondent-husband also filed Criminal Original Petition in Crl. O.P. No.18529 of 2019 seeking Police protection. When the Petitions came up for hearing, this Court referred the matter for mediation attached to this Court. In the Mediation, the parties arrived at an amicable settlement. Accordingly, Award was passed in Mediation. The learned Senior Counsel for the Respondent invited the attention of this Court to the contents of the Mediation Compromise, wherein, it was specifically stated that Schedule property shall not be alienated and it can be rented out. The schedule property shall be properly protected physically and handed over to the minor children after the life interest of the second party (Revision



Petitioner). It is also agreed that the parties shall administere the schedule mentioned properties jointly. The income arising out of the schedule properties after appropriating all the upkeep expenses shall be divided into four equal portions (25%) and to be utilized as follows: 25% has to be deposited in the account of the second party/Prithi, at present and later new account should be opened. The other 25% has to be deposited in the account of the minor son viz., K.Ashwanth, at present and later new account should be opened. The third share of 25% has to be deposited in the account of minor daughter viz., K.Bhavana, at present and later new account should be opened. The last share of 25% will be utilized for the family maintenance and expenses.

18. The learned Senior Counsel for the Respondent invited the attention of this Court to Section 21 of Tamil Nadu Legal Service Authority Act which reads as follows:

“21. Award of Lok Adalat- (1) Every award of Lok Adalat shall be deemed to be a decree of a civil Court or, as the case may be, an order or any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the Court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.”



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19. According to the learned Senior counsel for Respondent, in order to encourage compliance of the decree in Mediation Section 21 was incorporated whereby the decree so passed will bind the parties and no appeal thereof can be preferred. Therefore, the decree passed on the basis of the settlement arrived at before the Medication Centre is non-executable and cannot be considered as executable. Her also invited the attention of this Court to the Counter filed by the Revision Petitioner, in the Execution Petition by referring to Section 47 of Civil Procedure Code *inter alia* questioning the maintainability of the Execution Petitions. When that be the case, instead of subjecting herself to the enquiry to be conducted thereof, the Respondent has approached this Court invoking Article 227 of Constitution of India which is nothing short of forum shopping. The learned Senior Counsel for the Respondent also invited the attention of this Court to Clause 9,10 and 11 of Mediation Agreement reads thus:

“9. The parties have to repay the existing personal loans and vehicle loans from the upkeep expense.

10. The parties agree to repay from the upkeep expenses, the existing housing loan availed in Bank of India, Puducherry Main Branch or in the alternative, the parties agree to sell away the property situated at AVM Apartments, 20th Cross, Krishna Nagar, Lawspet, Puducherry to settle the loan.

11. The sale agreement registered as Doc. No.4481/2017, on the file

of the SRO, Vanur; will be cancelled and the advance sale consideration



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will be repaid from the upkeep expenses.”

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20. Heard the learned counsel for the Revision Petitioner and the learned Senior counsel for the Respondent and perused the materials placed on record.

21. It is an admitted fact that the suit as well as the counter claim made by the Revision Petitioner as well as the Respondent has been disposed of on the basis of the settlement arrived at between them before the Tamil Nadu Mediation and Conciliation Centre attached to this Court. A consensus has been arrived at between the parties to bury the hatchet and it was also reduced into writing. While so, in the event of breach of any of the terms of the conditions incorporated therein, it is not open to the parties to re-agitate the same dispute through an Execution Petition. Therefore, the trial court is right in returning the Execution Petitions filed by the Respondent herein as not maintainable.

22. With respect to C.R.P. No. 380 of 2023 arising out of E.P. No. 5 of 2022 seeking to cause the arrest of the Revision Petitioner and to commit her to civil prison in execution of the decree, at the outset, it must be stated that the decree is not executable inasmuch as it was passed on the basis of a



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consensus arrived at between the parties before the Mediation Centre.

Secondly, Section 56 of the Code of Civil Procedure lays down a clear bar for arrest or detention of women in execution of decree for money. Therefore, this Court is of the view that the EP No.5 of 2022 filed by the Respondent is not maintainable and it is liable to be struck off.

In the result, ***C.R.P. No. 380 of 2023 alone is allowed by striking off EP No. 5 of 2022 filed by the Respondent herein as not maintainable and in the light of the specific bar under Section 56 of CPC. Resultantly, C.R.P.Nos.378, 381 and 382 of 2023*** are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

24.03.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned Judge,
Family Court, Villupuram.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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24.03.2023