



C.R.P.(NPD)No.4098 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.4098 of 2015
and MP.No.1 of 2015

K.Kathirvelu

... Petitioner

Vs.

D.Nagaraj

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside fair and decreetal order dated 17.08.2015 in E.A.No.4745 of 2014 in E.P.No.4625 of 2013 on the file of the IX Assistant City Civil Court, Chennai and consequently dismiss E.A.No.4745 of 2014.

For Petitioner : Mr.T.Saikrishnan

For Respondent : Ms.Kausalya
for Mr.P.Sam Japa Singh

ORDER

This revision arises against the order passed in E.A.No.4745 of 2014 in E.P.No.4265 of 2013. The petitioners before me entered into a



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memorandum of compromise on 28.11.2012. That was presented before Lok Adalat conducted by the District Legal Services Authority at Chennai. An award was passed on 17.12.2012. In terms of the settlement, a memorandum of compromise was entered into on 28.11.2012. That is, to say the compromise memo got the seal of approval and became a decree of the Lok Adalat award dated 17.12.2012. This Lok Adalat award was presented before the learned Judge dealing with the suit in O.S.No.7927 of 2011. Recording the award passed by the Lok Adalat, the suit was disposed of.

2.Since the respondent did not comply with the terms of the compromise, a petition was filed for attachment and for sale of the schedule mentioned property in terms of Order 21 Rule 54 of the Code of Civil Procedure. This E.P. was taken on file as E.P.No.4625 of 2013. On 03.12.2013, the Court found that the judgment debtor had not complied with the terms of the decree and had ordered attachment of the property. The property was also attached on 03.12.2013. While the matter was pending, the petitioner filed an application in E.A.No.4745 of 2014



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stating that the Court should condone the delay of 258 days in setting aside the exparte order passed in the Execution Petition.

3.A counter was filed to this application stating that the Execution Petition was less than two years and therefore, the question of notice to the judgment debtor does not arise. Apart from that, it was pointed out that the respondent/judgment debtor is acting contrary to the memorandum of compromise as well as the award of the Lok Adalat and therefore, did not deserve any sympathy.

4.The sheet anchor of the petitioner's case is that he fell sick and was unable to come before the Court for purpose of resisting the Execution Petition. The learned trial Judge, not only went behind the decree and held that the property is not the subject matter of the Execution Petition, but also condoned the delay and raised the attachment of the property.

5.I heard Mr.T.Saikrishnan, learned counsel appearing for the petitioner and Ms.Kousalya, learned counsel for Mr.Sam Japa Singh, learned counsel appearing for the respondent. I have carefully gone



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through the records.

6.A perusal of the copy of the Lok Adalat award would go to show that the defendant/judgment debtor had agreed to pay Rs.28,00,000/- to plaintiffs 1 to 4 and a sum of Rs.55,00,000/- to the 5th plaintiff in full and final settlement of their dues. In other words, it is a money decree. A money decree can be put into execution by way of attachment of the immovable property which belongs to the judgment debtor. It is hence that an application was filed for attachment and sale in terms of Order 21 Rule 54 of the Code of Civil Procedure. The learned trial Judge had missed out on the point that it is not necessary that decree holder must proceed only against the property which is the subject matter of the agreement, but can attach properties, which belong to the judgment debtor for the satisfaction of the decree. This is what has been done in the present case.

7.Apart from this fact, though the respondent has pleaded that he was sick and unable to attend the Court, no evidence has been put forth before the trial Court that the petitioner was suffering from any sickness.



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8.The Court below ought to have taken note of the fact that an award had been passed as early as 2012 and unfortunately, the decree holders have not seen even a single paise in terms of the award. A Lok Adalat award deserves the same respect as a decree of a Civil Court.

9.Just like an Executing Court cannot go behind the decree passed by the Civil Court, it is not open to the Executing Court to go behind the decree passed in terms of a Lok Adalat award. The raising of the attachment of the property though the prayer was for condoning the delay under Order 21 Rule 106 of the CPC, is an erroneous exercise of jurisdiction by the Executing Court.

10.Sufficient cause is *sine qua non* for the purpose of exercising the jurisdiction under Order 21 Rule 106 of the CPC. The petitioner having failed to substantiate the reason that he was sick and therefore, unable to meet his Advocate to give instructions is not entitled to any indulgence. Despite opportunities being afforded, he has failed to file any records. I am not able to see sufficient cause given in terms of the petition filed under E.A.No.4745 of 2014. The condition precedent being absent,



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the petition ought to have been dismissed.

11.In the light of the above discussion, the order and decreetal order in E.A.No.4745 of 2014 in E.P.No.4625 of 2013 is set aside. The petition filed in E.A.No.4745 of 2014 will stand dismissed. This Civil Revision Petition is allowed.

12.The decree being of the year 2012, the Executing Court is requested to take up the matter and proceed on it with all expediency and ensure that the decree holder sees the benefit of the decree on or before 31.03.2024. On the completion of the execution proceedings, the Executing Court shall submit a report to this Court, in any event as stated above before 31.03.2024. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

vs



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The IX Assistant City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN,J.

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