



CRP. No. 3552 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 3552 of 2023
& CMP No. 22233 of 2023

Thavasamy

...Petitioner

Vs.

Pandyadurai

....Respondent

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to set aside the order dated 24.08.2023 passed in E.P No.27 of 2022 in O.S No. 364 of 2018 on the file of Principal Sub Court, at Virudhachalam.

For Petitioner : Mr.R.Thirumoorthy

For Respondent :



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ORDER

This petition has been filed to set aside the order dated 24.08.2023 passed in E.P No.27 of 2022 in O.S No. 364 of 2018 on the file of Principal Sub Court, at Virudhachalam.

2. Heard the learned counsel for the petitioner.

3. The judgment debtor filed this petition. Admittedly, both the petitioner and the respondent are in laws of the judgment debtor further already there is a family dispute between his daughter and son-in-law. Based on the promisory note recovery of money was claimed by the respondent in O.S No. 364 of 2018 on the file of Sub Court, Virudhachalam, the said suit was decreed on merits against which the revision petitioner filed appeal before the District Court, Cuddalore in A.S No. 66 of 2023, during the pendency of the said appeal to execute the decree the respondent herein/plaintiff filed E.P No. 27 of 2022 in O.S NO. 364 of 2018 to attach the salary of the judgment debtor/defendant the said petition was objected by the defendant stating that he had already preferred an appeal but the execution Court made an observation that even appeal is pending but there is no stay for the proceedings hence this Court is entitled to proceed with E.P proceedings. Accordingly, allowed the E.P petition by attaching the salary



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of the revision petitioner. When appeal is pending proper procedure to be adopted but without following the proper procedure the executing Court passed order as such is unsustainable. Challenging the said order the petitioner filed this petition. Now, as on date as per the revision petitioner the appeal was preferred against the decree. However, there is no stay order was passed by the appellate Court, but is no reduction made before attaching the salary by executing court. Therefore order passed by the Trial court in E.P No. 27 of 2022 in O.S No. 364 of 2018 is clear abuse of process of law.

4. The Trial court should have passed order under Section 60 of CPC, to attach the salary by mentioning entire salary after deduction portion of the amount to be attached, but on seeing the order entire salary ordered to be attached as such is erroneous one as well as reason assigned by the Court is not justifiable. Hence the order passed by the executing Court in E.P No. 27 of 2022 in OS No. 364 of 2018 is hereby set aside.

5.The executing Court is directed to give opportunity to the petitioner its submission in respect of attaching salary thereafter decide the matter on merits as per manner known to law.



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6. In result, this Civil Revision petition is allowed. No Cost.

Consequently, connected miscellaneous petition is closed.

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