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CRP No.3739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3739 of 2017
and CMP No.17380 of 2017

N.Narayanan

.... Petitioner

Vs

Tmt.T.Hemalatha

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 21.04.2017 passed in REA No.9 of 2017 in REP No.61 of 2016 in O.S.No.151 of 2015 by the learned Principal Subordinate Judge, Krishnagiri.

For Petitioner : Ms.S.Meenakshi

For Respondent : No appearance

ORDER

This Civil Revision Petition arises against an order passed by the learned Principal Subordinate Judge, Krishnagiri in REA No.9 of 2017 in REP No.61 of 2016 in O.S.No.151 of 2015.



CRP No.3739 of 2017

2. The petitioner before me is the judgment creditor. He had presented a suit in O.S.No.151 of 2015 for recovery of Rs.2,20,000/- (Rupees Two lakhs twenty thousand only) together with interest. The said suit was decreed on 08.10.2015. In the meantime, MCOP No.96 of 2003 was filed by the judgment debtor/respondent in this civil revision petition, claiming compensation of Rs.25,00,000/- towards the death of her husband Thirumoorthy on 29.06.2002. It ended in an award dated 29.03.2006.

3. As per the Award in MCOP No.96 of 2003, Rs.12,01,000/- was awarded to the respondent and Rs.1,00,000/- each was awarded to the children and parents. The petitioner/judgment creditor presented an Execution Petition for attachment of an amount of Rs.2,56,353/- together with subsequent interest of Rs.10,413/-, in all Rs.2,66,766/-. The said application was numbered as REA No.9 of 2017. Since the respondent could not be served, paper publication was effected and thereafter, by proceedings dated 27.03.2016, a cheque for the said amount was directed to be issued and accordingly, the cheque was also issued.



4. However, the learned Subordinate Judge, vide the impunged order, dismissed the petition on the basis of the judgment rendered by the Division Bench of this Court in the case of ***K.Ayyasammy vs Mohanasundari and others 2003 (3) LW 712***. According to the said judgment, the award of compensation granted by the Court enures in favour of the person who is the petitioner before the Court in the MCOP proceedings and does not vest with the estate of the deceased.

5. Ms.S.Meenakshi, learned counsel for the petitioner, would contend that a perusal of the judgment would go to show that in the facts of that case, compensation has been awarded for the death of an advocate and for the liabilities incurred by him, an execution petition was filed, seeking to attach the compensation that has been awarded to his family members. This Court had held that there are two forms of damages – one is the pecuniary loss to the estate of the deceased from the accident and another is the pecuniary loss sustained by the members of the family due to his death. The Division Bench of this Court has categorically held that the amount awarded for the death of the deceased does not enure to the estate, but enures personally in favour of the



CRP No.3739 of 2017

WEB COPY

6. Ms.S.Meenakshi points out that in the case on hand, it was not Mr.Thirumoorthy, the husband of Hemalatha, who incurred the debt, but it was Hemalatha herself who had received a sum of Rs.2,00,000/- from Narayanan/judgment creditor and also issued a cheque in discharge thereof. In other words, she would point out that there is a difference between the husband being judgement debtor and the wife being the judgment debtor in whose favour compensation has ensued.

7. I agree with Ms.S.Meenakshi. The compensation that has been paid might be on account of death of Thirumoorthy, but, it is a compensation granted to Hemalatha in her personal capacity. The decree passed in O.S.No.151 of 2015 is also against Hemalatha not as a legal heir of Thirumoorthy, but as a judgment debtor. Consequently, Hemalatha is answerable to the decree passed in O.S.No.151 of 2015 dated 08.10.2015.

8. Having come to the conclusion, I necessarily have to set aside the order



CRP No.3739 of 2017

passed in REA No.9 of 2017 dated 21.04.2017. Accordingly, the order passed in REA No.9 of 2017 in REP No.61 of 2016 in O.S.No.151 of 2015 is set aside and the Civil Revision Petition is allowed and REA No.9 of 2017 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

The Principal Subordinate Judge, Krishnagiri.



WEB COPY



CRP No.3739 of 2017

V.LAKSHMINARAYANAN,J.

SR

CRP No.3739 of 2017

14.08.2023