



WEB COPY



CRP (MD) No.1684 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15.09.2023
Pronounced on	29.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1684 of 2023

and

CMP(MD)No.8403 of 2023

S.Mareeswari

... Petitioner

Vs.

Subbulakshmi

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and executable order dated 06.04.2023 passed in E.A.No.487 of 2022 in E.A.No.201 of 2021 in E.P.No.221 of 2016 in O.S.No.113 of 2004 on the file of learned Principal Subordinate Judge, Madurai.

For Petitioner : Mr.P.Shanmugam

For Respondent : Mr.R.Suriyanarayanan

ORDER

This revision petition is preferred as against the order passed in E.A.No.487 of 2022 in E.A.No.201 of 2021 in E.P.No.221 of 2016 in



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O.S.No.113 of 2004 on the file of the learned Principal Subordinate Judge,
Madurai.

2. According to the revision petitioner, the revision petitioner filed E.A.No.201 of 2021 under Section 47 of CPC challenging the decree and judgment passed in O.S.No.113 of 2004. In the said application, he filed another application in E.A.No.487 of 2022 calling for the documents and records of the original suit required for the disposal of the petition filed under Section 47 of CPC. It is submitted that in E.A.No.201 of 2021 filed under Section 47 CPC, it is clearly stated that the decreetal amount of Rs.1,40,000/- was not borrowed by the revision petitioner from the respondent at any point of time. The above facts are admitted by the respondent in the trial proceedings while examining as P.W.1. Therefore, the petitioner is not liable to pay any amount to the respondent. Hence, the petitioner challenged the decree and judgment in O.S.No.130 of 2014. The Executing Court came to erroneous conclusion that the Executing Court cannot go behind the decree and thereby, dismissed the application filed by the petitioner herein. Hence, the order passed by the trial Court is liable to be set aside.



3. On the other hand, the learned counsel for the respondent would submit that the petitioner failed to comply with the conditional order passed by the trial Court on 10.01.2017 to pay a cost of Rs.5,000/- to the respondent per month and the same was not complied with by the petitioner after September, 2018. The petitioner with an intention to delay the execution proceedings filed an application in E.A.No.150 of 2014 for setting aside the ex parte order and the same was also dismissed by the executing Court. The petitioner has not preferred any appeal against the said order passed in E.A.No.150 of 2018. On the other hand, the petitioner/judgment debtor filed an application under Section 47 CPC in E.A.No.220 of 2019 with an intention to drag on the proceedings. In fact, the petitioner has admitted the claim made by the respondent/plaintiff and thereafter, filed an application under Section 47 of CPC itself, is not maintainable and shows the mala fide intention of the petitioner. Therefore, since the application under Section 47 itself is not maintainable, it is not necessary to call for the documents as claimed by the petitioner.

4. Heard on both sides and records perused.



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5. Admittedly, the petitioner has not preferred any appeal against the judgment and decree passed by the trial Court in O.S.No.113 of 2004. In fact, the petitioner abiding the judgment and decree passed by the trial Court, continued to pay the decretal amount in installments. Therefore, the trial Court has rightly rejected the claim of the petitioner that the above documents are not necessary to decide the execution petition.

6. In view of the above, the order passed by the trial Court calls for no interference. However, the Costs of Rs.3,000/- imposed on the petitioner by the trial Court alone is set aside. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

The Principal Subordinate Judge,
Madurai.

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Pre-delivery order made in
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29.09.2023