



CRP.(MD).Nos.2095 and 2097 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP.(MD).Nos.2095 and 2097 of 2019

and

C.M.P.(MD).Nos.10899 and 10901 of 2019

CRP.(MD).No.2095 of 2019:

N.Meenatchi Sundaram

...Petitioner

Vs.

Shriram City Union Finance Limited,
No.123, Angappa Naicker Street,
Chennai District,
Represented through its Branch Manager,
Theni.

...Respondent

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the impugned order passed in EA No.04 of 2019 dated 12.03.2019 in EP No.87 of 2017 on the file of the Additional District and Sessions Court (FTC), Theni in ACP No.118 of 2013 dated 25.10.2014 on the file of Arbitrator.



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CRP.(MD).No.2097 of 2019:

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M.Satheeswaran

...Petitioner

Vs.

Shriram City Union Finance Limited,
No.123, Angappa Naicker Street,
Chennai District,
Represented through its Branch Manager,
Theni.

...Respondent

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the impugned order of return passed in unnumbered EA No. of 2019 dated 14.03.2019 in EP No.87 of 2017 on the file of the Additional District and Sessions Court (FTC), Theni in ACP No.118 of 2013 dated 25.10.2014 on the file of the Arbitrator.

For Petitioners : Mr.V.P.Rajan

For Respondent : Mr.J.Barathan
(In Both Petitions)

COMMON ORDER

Both these Civil Revision Petitions are at the instance of the respondent in the execution proceedings.

2. The respondent in both these petitions is the Bank which has moved applications to attach the salary of the revision petitioners. The



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applications to attach the salary came to be allowed in the Executing Court and the pro-order was also subsequently served on the Garnishee, the fourth respondent / the employer of the revision petitioners. At that stage, the revision petitioners moved applications for setting aside and recall the orders passed by the Executing Court. However, the Executing Court has dismissed the said applications filed by the revision petitioners solely on the ground that the pro-order had already been served on the Garnishee, namely, the fourth respondent and therefore, the petition was not maintainable.

3. Heard the learned counsel appearing on behalf of the revision petitioners and the learned counsel appearing on behalf of the respondent Bank.

4. The learned counsel appearing for the revision petitioners would bring to the notice of this Court the case of ***V.Ramalingam Vs. Thayamuthammal*** reported in ***(1998) 3 MLJ 241***, wherein, in very similar circumstances, this Court has held that an application to set aside the exparte order was maintainable and the judgment-debtor ought to be given an opportunity to put forth his objections to the attachment of the salary.



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5. The learned counsel appearing for the respondent Bank would submit that the applications filed by the revision petitioners by way of execution applications were clearly barred by limitation and therefore, on that score, both the applications are liable to be dismissed. Unfortunately, the Executing Court has not gone into this aspect as to whether the applications were barred by law and by limitation. The only ground on which the applications have been dismissed is that the pro-order was already served on the Garnishee. Unfortunately, this is not a valid ground to hold that an application seeking for raising an order of attachment of salary is not maintainable. Despite the pro-order being served on the Garnishee, it is always open to the judgment-debtor to move an application to recall the order attaching his / her salary. On this score, the order of the Executing Court is liable to be set aside, however, leaving it open to the respondent to canvass the point of limitation before the Executing Court, at the time of enquiry.

6. Resultantly, C.R.P.(MD).No.2095 of 2019 is allowed and the Executing Court shall decide E.A.No.04 of 2019 after hearing the revision petitioner as well the respondent Bank, in accordance with law



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and in any event, pass final orders within a period of four (4) weeks from the date of receipt of a copy of this order. C.R.P.(MD).No.2097 of 2019 is allowed and the order passed by the Executing Court is set aside and the Executing Court is directed to number the petition in E.A.SR.No.1066 of 2019 after hearing the revision petitioner as well as the respondent Bank, the Executing Court shall pass orders on merits and in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

30.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
tsg

To

- 1.The Additional District and Sessions Court (FTC), Theni.
- 2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.



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