



CRP No.5049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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M/s Margadarsi Chits Private Limited,
rep. by its Neelankandu, Foreman,
Kumarn Building, No.AA-152, 2nd Floor,
3rd Avenue, Anna Nagar, Chennai.

... Petitioner

Vs.

1. S.Usha
2. R.Srinivasan
3. K.Saraswathi
4. G.Kulasekaran
5. G.Anandha Kumar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.06.2022 in E.P.No.2405/2019 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner

: Mr.D.Shivakumaran



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 24.06.2022 passed in E.P.No.2405/2019 by the learned IX Assistant Judge, City Civil Court, Chennai.

2. M/s Margadarsi Chits (P) Ltd, who is the petitioner herein, had filed the above execution petition against the respondents herein to issue a warrant to attach and sale of movable properties belonging to the Garnishee of the fourth Judgment Debtor, to realise the E.P.claim of Rs.1,01,979/-, on the basis of the Arbitral Award passed in ARC No.580/2008, dated 18.07.2008. The above petition was dismissed by the Execution Court and assailing the above order, the present Civil Revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.



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4. A perusal of the records reveals that, the first respondent had obtained a chit loan from the petitioner (chit fund) herein, subsequently, the petitioner had obtained an Arbitral Award, dated 18.07.2008, against the respondents 1 to 4 herein, for payment of Rs.1,53,839/- together with interest at 24% p.a and for costs. Since the fourth respondent herein was stood as a guarantor for the chit loan obtained by the first respondent herein, the petitioner has filed the Execution Petition No.2405/2019 against the garnishee of the fourth respondent viz., Branch Manager, Indian Bank, Vijaya Complex, No.1961, Asiatic Colony, Anna Nagar West, Chennai 600 101. In the Execution petition, at Column No.12. the petitioner has sought assistance of the court as follows.

" To attach and sale the movables of Garnishee of JD4 under Order 21 Rule 43 and 64 of CPC to set for the attached amount, as per the pro-order served on the Garnishee JD4 and AMA on 10.03.10 in E.P.No.1574/2009 and send for Order served on Garnishee of JD-4 and AMA on 25.10.16 in E.P.No.1098 of 2015".

5. In the above execution petition, it is the contention of the petitioner that, after obtaining the Arbitral Award, they filed E.P.No.1574/2009 and



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E.P.No.1098/2017 for attachment of salary of the fourth respondent and the above attachment was made absolute on 10.03.2010 and 25.10.2016 and despite the order, the Garnishee has failed to pay amount.

6. To reply the above petition, the Garnishee of the fourth respondent, namely the Indian Bank, has filed the counter affidavit stating that the fourth respondent was an employee of Indian Bank, who voluntarily retired from service on 01.08.2018. It is further stated that, at the time of seeking VRS, the fourth respondent has given a requisition letter and the extract was,

"the garnishee order was issued on Indian Bank, Anna Nagar Branch for attachment of my salary and allowance towards recovery of Rs.1,83,105/- in monthly installments being the loan amount sanctioned to Mrs.Usha, for whom I stood as guarantor. As the borrower defaulted the payment, the financier initiated recovery through court. The same was recovered from my SB account from January 2010 to December 2011 and remitted to the Registrar, City Civil Court, by way of DD. There was no further recovery from my SB account since January 2012, as the balance amount was remitted by the defendants and the loan was closed by them".



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In the counter affidavit, the details of payments remitted to the Court from 29.04.2010 to 24.12.2011, regarding Judgment Debtor-4, was also given by the Bank in the tabular column.

7. After hearing both side and upon perusing the documents, the learned Judge has observed that, the Garnishee had attached the salary of JD from 29.04.2010 to 24.12.2011 and remitted the amount and when the respondents contended in their counter that the respondents have paid the entire loan amount and the loan was closed, it is the duty of the decree holder to prove that, some more due is in existence, but no statement of account is produced. As such, the learned Judge has dismissed the petition.

8. In such circumstances, this court is of the view that the prayer sought for by the petitioner before the execution court for attachment and sale of the movables (Table, fans, chairs, computer sets, A/c Machine to the value of Rs.1,01,979/-) of Garnishee of JD-4, is not permissible in the eye



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of law. Therefore, the learned Judge, has rightly dismissed the execution petition, finding that there is no material from the petitioner to prove, some more due is in existence and I find no infirmity in the order passed by the learned Judge.

9. In fine, this civil revision petition is dismissed and the impugned order passed by the Execution Court is upheld. No costs.

05.01.2024

Index: Yes/No
Internet: Yes/No
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To

The IX Assistant Judge,
City Civil Court, Chennai - 104.



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V.SIVAGNANAM, J.,

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