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C.R.P.(NPD).No.1636 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 18.04.2024

Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(NPD).No.1636 of 2024 &  
CMP.No.8696 of 2024

V.Jayakanthan

... Petitioner

-Versus-

1.Nourmanachiar

2.SaidAlaoudine

3.Mohamed Ameen

4.Mohamed Oumer

5.C.Thandamizhkumaran

... Respondents

Civil Revision Petition under Section 115 of the Code of Civil Procedure to set aside the order dated 07.02.2024 made in E.A.No.53 of 2023 in E.A.No.6 of 2023 in E.P.No.1 of 2023 on the file of the learned II Additional District Munsif, Puducherry.

*For Petitioner : Mr.C.Sivanesan*

*For Respondents : Mr.T.Vijay*

**ORDER**

This civil revision petition arises against the order passed in E.A.No.53 of 2023 in EA.No.6 of 2023 in E.P.No.1 of 2023 in O.S.No.2225 of 2017 on



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the file of the II Additional District Munsif, Pondicherry.

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2. O.S.No.2225 of 2017 was filed by the civil revision petitioner against one Thandamizhkumaran. The said suit was decreed for the recovery of money, but was dismissed for mortgage. The suit was decreed on 14.03.2019. In order to execute the decree, E.P.No.1 of 2023 was filed by the civil revision petitioner/Jayakanthan, against the judgment debtor for the purpose of attachment and sale of the property.

3. On coming to know of the decree, the respondents 1 to 4 took out an application to deposit a sum of Rs.2,00,000/-, so as to satisfy the entire decree amount. The decree holder resisted the application saying that a third party does not have right over the property and therefore, they should not deposit the amount. The learned judge would have nothing of those arguments and allowed the application, against which the present revision.

4. It is normally expected of a decree holder to grab, at the first sight, the receipt of any money towards the satisfaction of the decree. Yet, here is the case where the decree holder is getting the money, but he is insisting only on



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the attachment of the property. Though notice was issued on the judgment debtor, he has conspicuously remained absent throughout the proceedings.

5. The execution petition is not based on immovable property, but it is based on a money decree. Therefore, the question of going into right, title and interest of the person who is willing to deposit the decreed amount does not arise here. The interest of the decree holder is only with respect to money, which has to be paid under the decree. He is not concerned with the source from which the money comes up. It is the case of the third party /respondents 1 to 4 that the property belongs to them. In order to obviate the ignominy of having to suffer attachment and sale of the property, they have come forward and have decided to pay the entire amount.

6. Under Order XXI Rule 55 of the Code of Civil Procedure, when the entire decree amount together with cost is deposited, the attachment is deemed to be withdrawn.

7. A perusal of the execution petition shows that the amount that the



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decree holder / civil revision petitioner claims is around Rs.1,60,000/-. As against this claim, the third parties have deposited Rs.2,00,000/-.

8. Mr.T.Vijay, learned counsel appearing for the respondents 1 to 4 has no objection for the decree holder to withdraw the decretal amount. The judgment debtor, who has no right over the property, cannot question the deposit made by the third party in order to protect his property from attachment.

9. In the light of the above, the civil revision petition is dismissed. The order permitting the third party/respondents 1 to 4 to deposit the amount to the credit of E.P.No.1 of 2023 is confirmed. The decree holder is entitled to withdraw such amount as he is entitled to [decree amount together with costs] from the amounts so deposited. The remaining balance, if any, the third parties/respondents 1 to 4 are permitted to withdraw. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes / no



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Neutral Citation : yes / no  
Speaking / Non Speaking Order

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To

The II Additional District Munsif, Puducherry.



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V.LAKSHMINARAYANAN, J.

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