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C.R.P.No.1656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1656 of 2023

S.Venkatesan

... Petitioner

Vs.

1.S.P.Nachiappan

2.M/s.AEE Casting Limited,

Rep. By its Director Mrs.K.Vijayalakshmi

D/o.J.Kumar

No.A1, F11 Industrial Estate,

Maraimalai Nagar,

Chengalpattu District – 603 209.

... Respondents

[R2 impleaded as per order dated 08.04.2024
in C.M.P.No.16873 of 2023]

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, to strike off execution proceedings bearing No.EP.142 of 2022 in O.S.No.11876 of 2010 on the file of the Principal District Court, Chengalpet on the ground of maintainability and want of right of the party to the party to sue.



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C.R.P.No.1656 of 2023

For Petitioner : Mr.B.Leelesh Sundaram
For R1 : Mr.S.Mukunth
Senior Counsel
for Mr.N.Damodaran
For R2 : Mr.L.Ramkumar

ORDER

The petitioner/judgment debtor in O.S.No.11876 of 2010 on the file of the Principal District Court, Chengalpet filed this revision petition to strike off the execution proceedings in E.P.No.142 of 2022.

2.The contention of the learned counsel for the petitioner is that the petitioner/plaintiff filed a suit in O.S.No.11876 of 2010 against eight persons as defendants, of which, the first defendant is M/s.AEE Castings Limited/second respondent herein and the second defendant is the first respondent herein. During the said proceedings, the matter was referred to the Lok Adalat, wherein the petitioner/plaintiff, the respondents herein and other defendants filed a joint memo, recording the same, the suit was decreed. The joint memo is as follows:



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BEFORE THE HONBLE VJ ADDITIONAL CITY CIVIL COURT AT CHENNAI

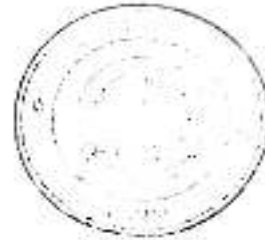
O.S. No. 11876 of 2018

S. Venkatesan



vs

- 1) M/s. AEE Castings Limited
- 2) S.P. Nachiappan
- 3) N. Muruganathan
- 4) Lakshmi Ramchandran
- 5) R. Vijay Sundar
- 6) R. Ajay Shanker
- 7) V. Suryanarayana
- 8) K. Viswantham



Defendants

JOINT MEMO

- 1) The PLAINTIFF shall pay to the 2nd Defendant a sum of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) in one or more installments on or before 31.12.2020 by RTGS/NEFT [SP NACHIAPPAN - Ax's Bank, 80feet Road Saligramam Branch, Current A/c No: 918020067115189 : IFSC: UTIB0002794]
- 2) The 2nd Defendant on receipt of the aforesaid amount of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) shall not have any claim over the 2100 equity shares held by the 2nd Defendant in the 1st Defendant Company.

For AEE CASTINGS LTD.

Authorised Signatory
C. S. S. S.

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3.The first respondent herein filed a Execution Petition in E.P.No.142

of 2022 based on the joint memo which cannot be filed, for the reason, the property sought for attachment is already an attached property and no further execution proceedings shall lie against already attached property, further in this case though the suit was decreed, it did not draw the decree but only passed an order, in such a situation the decree holder required to file an application under Section 151 read with Order 20 Rule 6A of CPC for drawing a decree in accordance with the order. Hence, in the absence of drawing of a decree, the EP cannot be initiated. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in the case of ***Sir Sobha Sing and Sons Pvt. Ltd., vs. Shashi Mohan Kapur [Deceased] through Legal Representative*** reported in **2020 [20] SCC 798** and the decision of the Meghalaya High Court in the case of ***Shri.Delican Shadap and another vs. Smti.Dal Nongtri*** and another reported in **2022 SCC Online Megh 33**.



4.Mr.L.Ramkumar, learned counsel for the second respondent

Company submitted that the petitioner as well as first respondent casting aspersion on the Company without any basis, the Company has nothing to do with the dispute between the petitioner and the first respondent. The first respondent/second defendant in the suit is still holding 2100 shares of the Company. The undertaking given by the petitioner not complied with. In fact, the Company earlier filed a criminal complaint against the first respondent in C.C.No.6944 of 2015, pursuant to the Lok Adalat order, the complaint was withdrawn.

5.The learned counsel for the first respondent not disputed the same.

He would submit that in this case the petitioner and the Company are hand in glove, in one stretch it is stated that the first respondent is still holding 2100 shares of the Company but first respondent submits he is not aware of functioning of the Company and not received any notice or annual report. The Company though claims to be an independent body, it is the petitioner's



wife who is managing the Company, she in collusion with the petitioner, acting as per the dictum of the petitioner. Though the petitioner agreed to pay Rs.75 lakhs and get shares transferred, not paid any money. Added to it, the petitioner along with his wife Jayasankari, using the Company property, obtained loan from HDFC Bank for several crores, thereby misappropriated the Company property and for this reason, in EP proceedings he sought for attachment of the Company properties to safeguard the interest of the petitioner. He further submitted that the decision referred to by the petitioner pertains to landed properties wherein after preliminary decree demarcation of property with area and physical features are required for apportioning the properties as per the shares allotted. As far as the case in hand, it only pertains to transfer of shares. He further submitted that the petition filed by the petitioner is not maintainable in law. He further referred to the decisions of this Court in the case of *Valli vs. Muniasamy* reported in **2015 (2) MWN(Cr.) 176** and *M.Elumalai and another vs. S.Rajaram* reported in **2014 (5) LW 243** and submitted that in both the case,



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the decision of the Apex Court in the case of ***K.N.Govindan Kutty Meno vs.***

C.D.Shaji [Civil Appeal No.10209 of 2011] was referred, wherein the Apex

Court clearly held that in view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court

6.In view of the same, the civil revision petition is not maintainable since it was filed against the EP proceedings. As per Section 151(2) of CPC, only appeal will lie against EP proceedings and hence, this petition is not maintainable both on law and on facts.

7.In the result, the Civil Revision Petition stands dismissed. No costs.

08.04.2024

Index : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

cse

To

The Principal District Judge,
Chengalpet.

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08.04.2024