



C.R.P.Nos.2226 and 2228 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.Nos.2226 and 2228 of 2023
and CMP Nos.13504, 13508, 13534 and 13535 of 2023

M/s Rajalakshmi Educational Trust,
Represented by its Managing Trustee,
Mrs.Thangam Meganathan
No.K-67, Anna Nagar (East),
Chennai-600 102

.... Petitioner in both the revisions

vs

M/s Mech Struc Engineers,
Represented by its Managing Partner
P.Kasturi,
No.33, Thiruvengadam Street,
Ramakrishna Nagar,
Chennai-600 028.

..... Respondent in both the revisions

Civil Revision Petition filed under Section 115 of Civil Procedure Code to direct IX Assistant City Civil Court, Chennai to number EA SR Nos.76940 and 76939 of 2022 in EP Nos.4101 and 4099 of 2019 in O.S.Nos.10188 and 10029 of 2010.

For Petitioner : Mr.P.Neethi Kumar

For Respondent : Mr.A.V.Arun



C.R.P.Nos.2226 and 2228 of 2023

COMMON ORDER

WEB COPY

These Civil Revision Petitions have been filed to direct IX Assistant City Civil Court, Chennai to number EA SR Nos.76940 and 76939 of 2022 in EP Nos.4101 and 4099 of 2019 in O.S.Nos.10188 and 10029 of 2010.

2. The revision petitioner herein is the Judgment Debtor in EP Nos.4099 and 4101 of 2019 for attachment and sale of movables of judgment debtor for recovery of Rs.35,55,435/-(in respect of EP No.4099 of 2019) and Rs.47,43,812/- (in respect of EP No.4101 of 2019).

3. The Decree Holder/Firm had filed O.S.Nos.10188 of 2010 for recovery of Rs.13,75,156/-together with interest at 12% and 10029 of 2010 for recovery of Rs.22,76,200/- together with interest at 12%. Both the suits were decreed on 20.09.2016 and they have not been challenged by the judgment debtor till date and the decree had attained finality.

4. In the Executing Court, the petitioner/judgement debtor had filed



C.R.P.Nos.2226 and 2228 of 2023

Applications in E.A.SR Nos.36380 and 36382 of 2021 in EP Nos.4101 and 4099

of 2019 in O.S.Nos.10188 and 10029 of 2010, stating that the Execution Petitions violate Order XXI Rule 11 (2) and Order XXI Rule 17 of Civil Procedure Code and raised various objections including the other objections that were raised by the judgment debtor under Section 47 of Civil Procedure Code. The contention of the judgment debtor is that the decree holder/partnership firm did not exist and that the partnership firm got dissolved upon the demise of a partner viz., K.Selvaraj and that the present partner Ms.P.Kasturi is not a competent person to file an Execution Petition. The Executing Court had dismissed E.A.SR Nos.36380 and 36382 of 2021, against which, the revision petitioner/judgment debtor filed Civil Revision Petitions in CRP Nos.700 and 701 of 2022 and they came to be dismissed by this Court by order dated 11.03.2022. At the time of disposal, the petitioner/judgment debtor contended that the judgment debtor would be ready to pay the entire decretal amount in both the Execution Petitions in which both the CRPs arise within a period of four weeks from 11.03.2022 subject to the decree holder filing a detailed statement of accounts to enable the judgment debtor to organise payment of the balance decree amount, if any. This Court, taking into consideration the fairness of the judgment debtor, had directed him to deposit the amount. Subsequently, the petitioner/judgment debtor had filed



C.R.P.Nos.2226 and 2228 of 2023

applications in CMP Nos.7211 and 7212 of 2022 seeking extension of time and this Court, taking into consideration the submissions made by the revision petitioner/judgment debtor, had directed the judgment debtor to deposit the suit claim amount before the Executing Court on 29.04.2022 and thereafter, this Court also directed the revision petitioner/judgment debtor to deposit the balance differential amount within a period of six weeks thereafter. Thereafter, the revision petitioner/judgment debtor paid some decretal amount and as per memo of Calculation filed by the revision petitioner/judgment debtor, an amount of Rs.12,64,324/- remains to be paid in E.P.No.4101 of 2019 and an amount of Rs.12,11,598/- remains to be paid in E.P.No.4099 of 2019.

5. During that time, the revision petitioner/judgment debtor has filed petitions in EA SR Nos.76939 and 76940 of 2022 contending that the Execution Petitions were not filed by a competent person and that the partnership/deed holder does not exist and partnership deed has not been produced. The Executing Court finding that the attitude of the judgment debtor repeatedly raising same objection before the executing court under Section 47 of Civil Procedure Code is not maintainable and also finding that the issues already determined cannot be re-agitated in the form of Section 47 of Civil Procedure Code, refused to



C.R.P.Nos.2226 and 2228 of 2023

entertain the petitions. Challenging the same, the present civil revision petitions are filed.

6. Learned counsel for the petitioner would submit that despite requests made by the petitioner to produce the recent Registration Certificate regarding the partnership firm and the details of the partners, the respondent/decreed holder had not furnished the same and the revision petitioner is not aware in whose name the amount has to be paid and he is entitled to know the names and thereby he would seek that directions be issued to the Court to number the petitions and pass orders.

7. Per contra, learned counsel for the respondent would submit that decree has been obtained by the respondent M/s Mech Struc Engineers, a partnership firm which was registered on 13.07.1984 with 11 partners and consequent to the death of some partners, it has been reconstituted. One P.Kasturi and S.Baskar, who are the founder partners of the Firm are continuing and the registration is also alive. Learned counsel further submits that it is the habit of the petitioner to file petitions one after another to delay the payment and the petitioner cannot take contradictory stand. The petitioner had earlier filed similar applications before the Executing Court and since it they were not numbered, the petitioner had filed



C.R.P.Nos.2226 and 2228 of 2023

revision before this Court in CRP Nos.700 and 701 of 2022 and the above revisions, the revision petitioner had given an undertaking to pay the remaining amount before E.P court in respect of E.P.Nos.4101 and 4099 of 2019 and after giving an undertaking before this Court, only to protract and to delay the execution proceedings, the petitioner has once again come up with very same prayer. Learned counsel further submitted that in the case of ***Zodiac Traders India vs Seychelles Public Transport Corpn reported in 2013(6)CTC 301***, this Court has referred to the decision of a **Full Bench** of this Hon'ble Court in the case of ***Hanumanthappa vs Seethayya and Company*** reported in ***1949 (62) LW 539***, wherein, the Hon'ble Full Bench has held that *the moment that a decree is passed for a debt due to the partnership the relationship of the partners qua the decree debt ceases and they become mere joint creditors entitled to the decree amount in such specific shares as they would be entitled to in the assets of the partnership firm on dissolution*. Learned counsel further submits that as on today, the partnership firm is in existence represented by its partners P.Kasturi and S.Baskar and Execution Petitions have been pursued by the Firm through P.Kasturi. The Executing Court has rightly finding that the petitions have been filed only to scuttle the Execution Proceedings has refused to number the same. In order to substantiate the claim that the firm M/s Mech Struc Engineers is in



C.R.P.Nos.2226 and 2228 of 2023

existence, learned counsel for the respondent has also furnished a web copy of the Firm's status issued by the Registration Department.

8. Heard both sides and perused the materials available on record.

9. The revision petitioner is the judgment debtor. He had already filed EA SR Nos.36380 and 36382 of 2021 in E.P.Nos.4101 and 4099 of 2019 objecting to EP proceedings on the very same grounds and against the non-numbering the same, the petitioner/judgment debtor had earlier approached this Court in CRP Nos.700 and 701 of 2022 and when this Court was not inclined to pass an order, the petitioner/revision petitioner through his counsel had undertaken to pay the entire decretal sum in both the execution petitions within a period of four weeks from 11.03.2022 and thereafter, he had filed CMP Nos.7211 and 7212 of 2022, seeking extension of time and this Court by order dated 27.04.2022 directed the revision petitioner/judgment debtor to deposit the suit claim before the executing court on 29.04.2022 and to deposit the balance differential amount within a period of six weeks thereafter. Once again the petitioner/judgment filed petitions in EA SR Nos.76939 and 76940 of 2022 with the same prayer and the same was rejected. Challenging the same, the revision petitioner/judgment debtor has filed



C.R.P.Nos.2226 and 2228 of 2023

the present revision petition.

WEB COPY

10. From the records, it is seen that the partnership firm M/s Mech Struc Engineers is the plaintiff and decree holder and the Execution Petition is also filed by the partnership firm through one of its partners. A Full Bench of this Hon'ble Court in *Hanumanthappa's case* referred supra has held that the partners are entitled to the decree amount in specific shares as they would be entitled to in the assets of the partnership firm on a dissolution. Further as on today, the Firm is alive and existing. The petitioner has repeatedly been adopting the same tactics.

11. It is seen that the conduct of the revision petitioner/judgment debtor is only to delay the progress and evade payment. I do not find any merit in these revisions. Accordingly, both the civil revision petitions are dismissed. The Executing Court shall proceed with the execution proceedings.

No costs. Consequently, all miscellaneous petitions are closed.

09.09.2024



C.R.P.Nos.2226 and 2228 of 2023

sr

Index:yes/no

Website:yes/no

To

The IX Assistant City Civil Court,
Chennai



WEB COPY



C.R.P.Nos.2226 and 2228 of 2023

A.D.JAGADISH CHANDIRA,J.,

sr

CRP Nos.2226 and 2228 of 2023

09.09.2024