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C.R.P.[NPD].No.3305 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.3305 of 2024 & CMP.No.17690 of 2024

Dr.Bharani R.Puluvai

. . . Petitioner

Versus

T.Ramesh

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order and Decretal Order dated 02.08.2024 passed in E.A.No.7 of 2024 in E.P.No.3848 of 2015 in O.S.No.478 of 2014 on the file of the X City Civil Court, Chennai.

For petitioner : Mrs.Rukmani R.V.
For P.B.Ramanujam Associates

Respondent : Mr.E.Om Praksh, Senior Counsel
for Mr.M.Ganesan



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ORDER

Challenge has been made to the Order raising attachment passed in E.P.No.3848 of 2015 dated 11.01.2016 passed by the Execution Court, the present Civil Revision Petition.

2. The brief background of the case is as follows :

The revision petitioner has filed a suit in O.S.No.478 of 2014 for recovery of a sum of Rs.15 lakhs with interest. The said suit was decreed on 23.05.2015. To execute the said decree, he has filed an Execution Petition in E.P.No.3848 of 2015, wherein the Order of attachment of the property of the judgment debtor was passed on 11.04.2016. Thereafter, it appears that when the Execution petition is posted for filing the sale papers, as the decree holder has not filed the sale papers till 18.07.2014, the Execution Petition was dismissed for default. However, while dismissing the Execution Petition for default, the Executing Court has not specifically directed to raise the



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attachment or passed any Order to continue the attachment to any specific period. At this stage, an application has been filed by the judgment debtor in E.A.No.7 of 2024 under Order XXI Rule 57 of Code of Civil Procedure. The trial Court considering the provisions of law and the judgment of the Apex Court held that once the execution petition has been dismissed, the attachment will not be renewed automatically, even in the event of restoration of the Execution Petition. Therefore, allowed the application raising attachment.

3. During the pendency of the proceedings, it appears that the revision petitioner has filed an application to restore the Execution Petition which was dismissed for default on 22.07.2024 in S.R.No.45284 of 2024. Therefore, the present application in E.A.No.7 of 2024 has been filed. However, the application filed by the revision petitioner to restore the execution petition has been returned and represented on 01.08.2024. However, when both the applications are pending, the application filed in E.A.No.7 of 2024 has been decided. Hence, it is the contention of the learned counsel appearing for the revision petitioner that when already an application has been filed to restore



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the Execution Petition and the same is pending, the Execution Court decided only the application filed by the judgment debtor in E.A.No.7 of 2024 and taking advantage of the Order passed in E.A.No.7 of 2024, the judgment debtor has transferred the property by way of settlement in favour of his wife. Hence, seeks to set aside the Order.

4. The learned Senior Counsel appearing for the respondent submitted that once the Execution Petition has been dismissed, the attachment passed automatically ceases as per the Order XXI Rule 57 of CPC. It is also brought to the notice of the Court that the judgment in **Indira Devi Arya Vs. Bajrang Lal Khaitan** reported in **2001 AIR SCW 4665**, the Apex Court has held that once the proceedings has been dismissed for default, the attachment also has to be non existent and could not be automatically revived on the restoration of the Execution Petition. According to him, under Order XXI Rule 57 of CPC, while dismissing the Execution Petition, the trial Court ought to have directed whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such



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attachment shall cease. It has not been done so. In the absence of any such direction, it is deemed that the attachment has ceased automatically. Hence, opposed the Civil Revision Petition.

5. Head both sides and perused entire materials available on record.
6. The law is very clear that once any proceedings in which attachment Order has been passed and that proceedings has been dismissed for default, even after the restoration of the said application, the attachment will not revive automatically as that of other interim Orders which will automatically revive in a suit or in any other proceedings. In such view of the matter, now the interim Order passed is only a consequential Order, pursuant to the application filed under Order XXI Rule 57[2] of Code of Civil Procedure. Therefore, the same does not require any interference. At the same time, this Court is of the view that the trial Court ought to have decided the application filed to restore the Execution Petition which was dismissed on 18.07.2024. However, trial Court has just like that decided the application filed to raising the attachment and



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had not passed any Order in the application filed to restore the Execution Petition. In the meanwhile, it appears that an attempt has been made by the respondent by way of transfer of the property to his wife.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Liberty is given to the revision petitioner to seek fresh attachment after restoration of the execution petition and she can also take a plea of fraudulent transfer as available under section 53 of the Act. It is also open to the respondent to take his legal defence. Considering the fact that taking advantage of the execution petition has been dismissed, the property has been now transferred to a third party, respondent shall maintain status quo and any further encumbrance is always subject to the result of the Execution Petition.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order
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N. SATHISH KUMAR, J.

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