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C.R.P. No.3645 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.3645 of 2022
and
C.MP. No.19287 of 2022

P.S. Mahalingam S/o. P.S. Sundaram ...Petitioner / Petitioner / Judgment
Debtor / Respondent

Vs.

M/s. HDB Financial Services Ltd., Respondent / Respondent / Decree
Holder / Claimant

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 06.06.2022 passed by the learned III Additional District Judge, Coimbatore in E.A. No. 1 of 2021 in E.P. No.47 of 2018 in Arb. Case No.3060 of 2014.

For Petitioner : Mr. L. Mouli

For Respondent : No appearance.

ORDER

The Civil Revision Petition has been preferred as against the order dated 06.06.2022 passed by the learned III Additional District Judge, Coimbatore in E.A. No.1 of 2021 in E.P. No.47 of 2018 in Arb. Case No.3060 of 2014, wherein the petitioner herein has filed an application under Section 5 of Limitation Act to condone delay of 974 days in filing the exparte set aside exparte order passed against him in E.P. No.47 of 2018 dated 06.12.2018 and



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the same was dismissed by the Trial Court. Against which, the present civil revision petition has been preferred.

2. According to the petitioner, the respondent herein had filed an Arbitration Petition in Arb. P. No.3060 of 2014 and the respondent did not serve any summons to the petitioner and hence exparte order was passed. Based on the said exparte order, execution petition has been filed. In the said execution petition, order of attachment of immovable property is also passed. The entire loan outstanding under the loan agreement was discharged by the petitioner and the respondent has also issued 'no objection certificate' on 06.12.2018. After receipt of the above said amount, they proceeded with the arbitration proceedings. Thereafter, the petitioner came to know about the encumbrance certificate of the property and found that it was attached upon the order of this Court. When the petitioner approached the respondent officials, they have promised not to proceed with execution proceedings, but they did not do so. Therefore, there is a delay of 974 days in filing the exparte order set aside application and hence the same may be allowed.

3. Before the executing Court, the respondent filed a counter stating that the Arbitration award was obtained after serving of notice to the petitioner. The petitioner after obtaining loan, did not repay the said amount, thereby as per the agreement, they filed an arbitration petition and award was passed by



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the Arbitrator. Based on the above said award, he executed the award. After passing award, the Arbitrator served copy to the petitioner and the petitioner was also served notice in the execution proceedings, but he did not appear. Therefore, there is no sufficient cause to condone huge delay of 974 days. Hence the petition is liable to be dismissed.

4. After serving of notice to the respondent, none appeared on behalf of the respondent before this Court.

5. The learned counsel appearing for the petitioner would contend that the respondent has filed an Arbitration claim petition and the Arbitrator has passed an award and the said award was executed through execution proceedings and the property of the petitioner was also attached. In fact already entire amount was settled and the vehicle was seized and sold by the respondent. Thereby, the petitioner has also issued No-objection certificate and by suppressing the said fact, they proceeded to file execution petition and attached the property of the petitioner. After serving of notice, he came to know about the proceedings, thereby there is a delay of 974 days in filing application to set aside exparte order passed in the execution petition. To that effect, he filed an application before the executing Court and the same was dismissed by rejecting the reasons stated by the petitioner and therefore, the order passed by the executing Court is liable to be set aside.



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6. Heard petitioner's side. Perused all the materials available on record.

7. On perusal of records, it is observed that already an Arbitration Claim petition was filed by the respondent and an award was passed and that award was also executed before the jurisdictional Court and the petitioner himself has admitted that after filing of execution petition, he approached the officials of the respondent and they assured not to proceed with execution, but the petitioner even after having knowledge about the pendency of execution petition, has not filed any application immediately and filed this petition after a huge delay of 974 days. The petitioner has not stated any valid reasons and the reasons stated by the petitioner that notice was not served and after the arbitration execution petition notice, he contacted the officials of the respondent and they assured to not press the execution proceedings, are not acceptable and there is no sufficient evidence produced in this regard. Therefore, the executing Court has passed an elaborate order and dismissed the application.

8. Therefore, there is no infirmity or perversity found in the order passed by the executing Court. At this juncture, the learned counsel appearing for the petitioner requested this court that already the vehicle was sold by the respondent and the sale price of the vehicle was not deducted from the loan



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amount and hence he may be permitted to put forth his defence before the executing Court in respect of the calculation. It is well settled law that as far as the exparte order is concerned, that is only for the particular stage and no bar to proceed the case thereafter and application under Order IX Rule 7 is required if the petitioner wants to challenge the earlier order passed by the Court. To continue the proceedings without agitating the earlier order passed by the Court, the petitioner need not file any application. Therefore, the petitioner can continue the E.P. proceedings in the present stage.

9. It is for the petitioner to approach the Executing Court, if he is able to establish his claim in respect of the calculation and the executing Court has to consider the same.

10. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To
The III Additional District Judge, Coimbatore



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P.DHANABAL, J.,

mjs

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