



WEB COPY



C.R.P. No.4343 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.4343 of 2022
and
CMP.No.22894 of 2022

The United India Insurance,
Company Limited,
No.13-A Nethaji Road,
Cuddalore.

... Petitioner / Judgment Debtor /
II Respondent

Vs.

1. Santhi

2. R.Surjith Kumar

... Respondents I-II / Decree Holders I-II /
Petitioners

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.11.2022 passed by the I Additional District and Sessions Court, Cuddalore, ordering Proclamation of Sale in E.P. No. 163 of 2014, and consequently, dismiss the Execution Petition.

For Petitioner : Mr. J.Michael Visuvasam

For R1 : M/s. M.Guruprasad

For R2 : No appearance



ORDER

WEB COPY

The Civil Revision Petition has been filed as against the order dated 16.11.2022 passed in E.P. No. 163 of 2014 in M.C.O.P. No. 1866 of 2006 on the file of the I Additional District and Sessions Court, Cuddalore, wherein the respondents herein have filed Execution Petition under Order 21 Rule (43 & 66) of the Code of Civil Procedure, 1908, to attach and sell the petition mentioned properties of the petitioner for realizing the amount of Rs. 17,12,957/- along with interest and costs. The Trial Court allowed the petition and ordered to realize the balance E.P. amount settlement of proclamation. Aggrieved by the said order, the present Civil Revision Petition is filed.

2. According to the petitioner herein, the respondents have filed M.C.O.P. No. 1866 of 2006 and an award of Rs. 13,18,504/- was passed with interest. Thereafter, both the parties entered into compromise and settled the case at Rs. 9,75,000/- with interest and costs. Already the main case was dismissed for default for some time and thereafter it was restored as per the order dated 10.10.2006 passed in I.A. No. 2916 of 2005 to condone the delay of 1625 days. In the said I.A., a specific order was passed that the claimants would not claim interest for that default period. Therefore, the total amount of Rs. 11,69,232/- was deposited by the petitioner herein. Already the



respondent herein has filed the petition in E.P. No. 64 of 2013 for a sum of Rs. 5,71,590/- and after due enquiry the same was dismissed as not pressed. Now without fair reason, the present Execution Petition was filed for Rs. 17,12,957/- claiming interest by including the default period and also claimed 9% interest as default interest. Therefore, the said Execution Petition is not in accordance with law and the same is liable to be set aside.

3. According to the respondents herein they are the Decree holders in M.C.O.P. No. 1866 of 2006 on the file of the Motor Accident Claims Tribunal, Cuddalore. After full trial, the same was allowed with an award of Rs. 13,18,504/- was passed along with interest. In spite of the award passed by the Tribunal, the petitioner herein has not complied the order of the Tribunal. On 23.01.2009, the petitioner had deposited only the sum of Rs. 11,69,232/-. The earlier E.P. No. 38 of 2010 was disposed on 16.03.2011. After deducting the amount already deposited by the petitioner, the balance amount would come to Rs. 11,38,390/- with subsequent interest from 24.01.2009 to 10.07.2014 a sum of Rs. 5,74,657/-, totally Rs. 17,12,957/- to be paid by the petitioner. Therefore, they filed an Execution Petition before the Trial Court.



4. Before the Trial Court, no oral or documentary evidences adduced by either side and the Trial Court, after hearing both sides, allowed the petition and ordered to pay the balance E.P. amount and settlement of proclamation was also ordered, and the same is challenged through this petition.

5. The learned counsel appearing for the petitioner would contend that the petitioners have included the default period for calculating the interest which already the claimants have waived the interest for the default period. But again they claimed the interest for that default period and further the TDS amount has also not been deducted by the Trial Court. After the award passed by the Trial Court, the matter was settled between the parties for a sum of Rs. 9,75,000/-. Now, the petitioners are claiming interest for the default period for the entire award amount without considering the waiver of interest for the default period and the settlement arrived between them for Rs. 9,75,000/- and they are not entitled to pay the interest for the default period but only liable to pay the amount of Rs. 9,75,000/-, as agreed by the respondents-claimants. Based on the above said calculation, the petitioner has remitted the entire amount. The Trial Court failed to consider the waived interest for the default period. Therefore, the order passed by the Trial Court is liable to be set aside.



WEB COPY

6. The learned counsel appearing for the respondent would contend that the Trial Court has passed an award of Rs. 13,18,540/- with interest. Therefore, the petitioner has to pay the interest for the above said amount till the deposit of the amount. Already the respondent filed E.P. for realising the award amount and in the E.P. the petitioner herein has filed an E.A. No. 2 of 2020 alleging that the interest for default period was not deducted in the calculation in the E.P., but the Trial Court dismissed the said E.A. No. 2 of 2020 holding that there is no decree passed to waive the interest for the default period and the executing court has to go behind the decree and cannot go beyond the decree. Against which the petitioner herein filed C.R.P. No. 8380 of 2020 and the same was also dismissed and no further appeal is filed against the said C.R.P. No. 8380 of 2020. Therefore the order is final. Now again the petitioner cannot raise the same question about the waiver of interest through this application. Further the petitioner also filed petition to amend the decree and the same was also dismissed, hence the present petition is liable to be dismissed.

7. The main contention raised by the learned counsel for the petitioner is that the claimants already waived the interest for the default period. But the said interest waived not mentioned in the decreetal order. On perusal of the



records, this Court observed that already the petitioner has filed an application to amend the decree and the same was also dismissed. The claimants have filed E.P., in that E.P. also the petitioner herein challenged the interest for that default period and his plea was not accepted by the Execution Court. Against which, he filed a revision in C.R.P. No. 8380 of 2022 and the same was also dismissed. Therefore, the interest for the default period attained finality and once again the petitioner cannot re-agitate the same through this application and the Trial Court also in this context after elaborate discussion held that already the E.A. No. 2 of 2020 was filed before the Execution Court and the Execution Court passed order without deducting the interest for default period, since there is no recitals in the decreetal order. As against the same, the C.R.P. No. 8380 of 2020 was filed and the same was also dismissed, therefore, it attained finality. Before this Court, both the counsel have filed calculation memo and the petitioner after award passed by this Court entered into compromise with the respondent-claimant without preferring an appeal and thereby deposited the amount alleging that the claimants-respondents agreed for a sum of Rs. 9,75,000/-.

7. This Court perused the calculation memo filed by the parties. The calculation memo reveals that the petitioner has not calculated the interest for



C.R.P. No.4343 of 2022

the default period and the petitioner also deducted the TDS for the amount.

According to the calculation of the petitioner, they deducted TDS amount of Rs. 40,149/- and Rs. 98,559/- and the same has to be deducted from the award amount. Since the petitioner is liable to pay the subsequent interest to the award amount, the TDS amount deducted by the petitioner is only for that particular period and for the subsequent period also they have to deduct the TDS. Therefore, it is appropriate to file a fresh memo before the Trial Court in respect of TDS deducted by the petitioner and thereafter, the Trial Court has to decide the same. However, the petitioner has to pay the entire award amount with interest without deducting the default period as per the decreetal order passed by the Court.

8. In view of the aforesaid discussions, the order passed by the Trial Court is in order and the present C.R.P. No.4343 of 2022 has no merits and deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
pal



C.R.P. No.4343 of 2022

To
WEB COPY

I Additional District and Sessions Court, Cuddalore.



WEB COPY



C.R.P. No.4343 of 2022

P.DHANABAL, J.,

pal

CRP. No.4343 of 2022

03.07.2024