



C.R.P.(PD).No.331 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.331 of 2024

Royal Sundaram General Insurance Co. Ltd.,
Represented by its Manager ... Petitioner

-Versus-

Pothys Private Limited,
Represented by its Directors ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 17.07.2023 in REP (SR) 9079 of 2022 in MCOP.No.639 of 2019 passed by the Special District Judge, (MCOP Cases), Salem.

For Petitioner : Ms.Gopika Nambiar for
Mr.Govind Chandrasekhar

For Respondent : Mr.A.Arasu Sanga Tamil for
Mr.K.S.Karthik Raja

ORDER

This civil revision petition arises against the order of return passed by the learned Special District Judge (MCOP cases) at Salem in REP.SR9079 of 2022 in MCOP.No.639 of 2019 dated 17.07.2023.



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2. The civil revision petitioner was the second respondent in MCOP.No.639 of 2019. In the said proceedings, the respondent herein was the first respondent. The claim came to be presented on account of the death of one Senthil Kumar in a motor accident. After trial, MCOP.No.639 of 2019 came to be ordered on 03.02.2022. The Tribunal had granted an award of Rs.12,37,000/- . It further directed that the civil revision petitioner, at the first instance, shall pay the compensation to the claimants and recover the same from the respondent herein.

3. The civil revision petitioner pleaded that it had paid a sum of Rs.15,62,508/- to the claimants and in terms of the award, it is entitled to recover the sum from the respondent herein. Hence, it presented REP SR 9079 of 2022. The learned Special District Judge (MCOP cases) who received the REP passed the following orders:

“There is a specific provision in Section 174 of the Motor Vehicles Act, enabling the insurance company to take appropriate action under the RR Act through the District Collector. Hence, the insurance company cannot invoke provision of Order XXI of the Code of Civil Procedure. Hence, this petition is hereby returned.”



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4. This order was passed on 17.07.2023. Aggrieved by the same, the present civil revision petition.

5. I heard Ms.Gopika Nambiar for Mr.Govind Chandrasekhar appearing for the civil revision petitioner and Mr.Arasu Sanga Thamil for Mr.K.S.Karthik Raja appearing for the respondent.

6. Ms.Gopika Nambiar argues that the insurance company is entitled to maintain the execution petition as the award permitted it to recover the sum from the respondent herein. She pleads that Section 174 of the Motor Vehicles Act, is an addition to the proceedings under Order XXI of the Code of Civil Procedure and it is not a total bar to file an execution petition.

7. Per contra Mr.Arasu Sanga Thamil pleads that when there is a specific provision under Section 174 of the Motor Vehicles Act, presenting an execution petition is not maintainable and therefore, no exception can be taken to the order of the learned Special District Judge (MCOP Cases).

8. I have carefully considered the submission of both sides.

9. The attention of the learned Executing Court had not been drawn to the Statutory Rules under the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules of 1989. This Rules have been enacted by the Government of Tamil Nadu in exercise of the powers vested under Section 176 read with



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Section 211 of the Motor Vehicles Act of 1988. In terms of Rule 22, in addition to the relief under Section 174 of the Motor Vehicles Act, a decree holder is entitled to execute a decree in the same manner as if it were the decree passed by the civil court. Rule 22 is plain and clear. An option is given to a decree holder to either proceed under Section 174 of the Motor Vehicles Act read with the Tamil Nadu Revenue Recovery Act or present a petition for execution of the decree in terms of Order XXI.

10. As the statutory provision has been ignored by the learned Special District Judge (MCOP cases), Salem, the order deserves to be set aside. Accordingly, the civil revision petition is allowed. There shall be a direction to the learned Special District Judge, (MCOP cases), Salem to number the execution petition and proceed in accordance with law. The petitioner will be entitled to a cost of Rs.10,000/-, being the cost in this revision.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

The Special District Judge (MCOP cases), Salem



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V.LAKSHMINARAYANAN, J.
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