



C.R.P.[NPD].No.5148 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.5148 of 2024

R.Ravinder Kumar (HUF),
S/o.Mr.Rishab Chand,
An Hindu Undivided Family,
Represented in the suit through power agent
at No.30, Govindu Street,
T.Nagar, Chennai – 600 007.

.. Petitioner

Vs.

1.N.V.S.Palani
2.Sumathi
3.R.Gunaseelan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the docket order passed in E.A.No.1 of 2024 in E.P.No.1604 of 2024 dated 21.11.2024 on the file of the X Assistant City Civil Court at Chennai.

For Petitioner : Mr.M.Nandhakumar
for Eswar Kumar and Rao



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ORDER

This Civil Revision Petition has been filed seeking to set aside the the docket order passed in E.A.No.1 of 2024 in E.P.No.1604 of 2024 dated 21.11.2024 on the file of the X Assistant City Civil Court at Chennai.

2.Originally, a suit in OS No.507 of 2022 has been filed and Order 37 Rule 1 and 2 CPC for recovery of sum of Rs.8,36,864/-. The said suit came to be decreed on 05.06.2024. Immediately, the petitioner filed the execution petition in E.P.No.1605 of 2024 seeking attachment of property, wherein he has also filed an application in EA No.1 of 2024, to dispense with notice to the judgment debtor. However, the executing Court has ordered notice to the Judgment debtor and the application filed by the petitioner was dismissed. Challenging the said order, the revision petitioner has come forward with the present Revision.

3.As the issue involved in the present revision pertains to the issuance of notice by the Executing Court to the Judgment Debtors and hence, and no notice is required to the respondent in the present revision and accordingly,



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the notice is dispensed with.

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4.It is the admitted fact that the execution petition has been filed within a period of three months from the date of the decree. Order 21 Rule 22 CPC provides that when an application is made more than two years after the date of decree or against the legal representatives of a party to the decree, the Court must first issue a notice to the person against whom execution is applied for requiring him to show cause why the decree should not be executed against him and the *proviso* to Order 21 Rule 22 CPC provides that no such notice is required if the application is made within two years from the date of the last order against the party against whom execution is applied for.

5.In “*Feroz Khan versus S.M.S.S.A Farook Ali*” reported in 2000 (III) CTC 115, the decree holder filed execution petition by furnishing name and address of the tenant before alteration by Corporation authorities without notice to tenant and in that context, while considering the very same provisions, namely, Order 21 Rule 11(2), 11(3) and 22 of the CPC and after



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referring to various earlier decisions, this Court has held that no notice is necessary if eviction petition is filed within two years from the date of decree. When the law itself dispense with the issuance of notice to the judgment debtor if the application is filed within two years from the date of decree, the question of issuing of notice to the judgment debtor does not arise at all. If the application is filed for attachment of the immovable property and if any attachment is passed, then notice as required under Order 21 Rule 59 CPC has to be necessarily issued to the parties or anybody who has claim over such property. In the present case, it is not in dispute that the execution petition has been filed within two years from the date of the decree and as such, no notice is required to be issued to the judgment debtor. Hence, the order passed by the Executing Court dated 21.11.2024 is set aside.

6. Accordingly, the Executing Court is directed to take up the E.P. and proceed further. If any attachment of property is required to be ordered, the Executing Court can decide the same on merits, but at this stage, no notice is required.



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WEB COPY 7. In the result, the Civil Revision Petition is allowed. No costs.

16.12.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The X Assistant City Civil Court at Chennai.



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N.SATHISH KUMAR, J.

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